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

BEFORE

SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER
AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.629/Hyd/2017**
(निर्धारण वर्ष / Assessment Year: 2007-08)

The Deputy Commissioner of Income Tax, Central Circle – 2(1), Hyderabad.	Vs.	M/s. KNR Constructions Limited, 3rd and 4th Floor, KNR House, Plot No.114, Phase – I, Kavuri Hills, Hyderabad – 500 033. PAN : AAACK8316L
अपीलार्थी / Appellant		**प्रत्यर्थी** / Respondent

आ.अपी.सं / **ITA No.650/Hyd/2017**
(निर्धारण वर्ष / Assessment Year: 2007-08)

M/s. KNR Constructions Limited, 3rd and 4th Floor, KNR House, Plot No.114, Phase – I, Kavuri Hills, Hyderabad – 500 033. PAN : AAACK8316L	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 2(1), Hyderabad.
अपीलार्थी / Appellant		**प्रत्यर्थी** / Respondent

निर्धारिती द्वारा/Assessee by: Shri S. Ramarao, Advocate.
राजस्व द्वारा/Revenue by: Ms. T. Vijaya Lakhsmi, CIT-DR.

सुनवाई की तारीख/Date of hearing: 19/06/2024
घोषणा की तारीख/Pronouncement on: 27/08/2024

आदेश / **O R D E R**

PER LALIET KUMAR, JM:

These cross appeals filed by the assessee and Revenue are directed against the common order of Commissioner of Income Tax (Appeals) – 12, Hyderabad dated 28.12.2016 passed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'Act') for the assessment year 2007-08.

2. As the facts of the case in the captioned appeals are identical, except the amounts involved, we take the appeal of assessee as lead appeal for the sake of brevity.

2.1. The grounds raised by the assessee in ITA No.650/Hyd/2017 reads as under :

"1) The order of the learned Commissioner of Income-Tax (Appeals) is erroneous to the extent it is prejudicial to the appellant.

2) The learned Commissioner of Income-Tax (Appeals) erred in holding that the initiation of proceedings u/ s 147 of the I.T.Act as valid.

3) The learned Commissioner of Income-Tax ought to have considered the fact that all the information was made available by the appellant before the Assessing Officer at the time of regular assessment and that he regular assessment proceedings were completed u/s 143(3) of the I.T.Act on 31.03.2009 after verification of the information.

4) The learned Commissioner of Income-Tax (Appeals) ought to have seen that the proceedings were initiated based on the audit objection which was initially not accepted by the Department and, therefore, cannot be considered as valid.

5) The learned Commissioner of Income-Tax (Appeals) erred in confirming addition of made by the Assessing Officer as unexplained cash credit disbelieving the fact that the appellant derived income from agriculture. Appeal Order and Assessment Order to the extent against Appellant is contrary to the facts and provisions of the Income Tax Act.

6) The learned Commissioner of Income-Tax (Appeals) ought to have seen facts of the case. that the said amount was accepted by the Assessing Officer at the time of completion of the regular assessment after verification of the facts of the case.

7) The learned Commissioner of Income-Tax (Appeals) erred in confirming the adhoc addition of Rs.40,00,000/- made by the Assessing Officer on the ground that vouchers etc. for some of the expenditure were not produced. The learned Commissioner of Income Tax (Appeals) ought to have considered the fact that for the same reason, the Assessing Officer, at the time of completion of the regular assessment, made an adhoc disallowance of Rs.20,00,000/- and no further data was available with the Assessing Officer so as to enable the Assessing Officer to increase the disallowance made in the regular assessment proceedings

8) The learned Commissioner of Income-Tax (Appeals) erred in confirming the order of the Assessing Officer in rejecting the exemption of the capital gain derived on sale of agricultural land of Rs.7,25,53,044/-.

9) The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that the lands sold were agricultural lands and that they were beyond the notified area: and that, therefore, the said lands cannot be considered as the capital assets within the meaning of Sec.2(14)(iii) of the I.T.Act.

10) The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that at the time of completing the regular assessment u/s 143(3) of the I.T.Act, the Assessing Officer allowed the claim of the appellant after due verification of the facts."

2.2. Thereafter, assessee has raised the following additional grounds which read as under :

"1. The CIT (4) erred in confirming the action of the Assessing Officer in reopening the assessment by invoking the provisions of sec. 147 of the Act, particularly when the Assessing Officer based his reopening on the advice of the Audit.

2. The CIT (A) erred in not considering the fact that the additions made by the A.O on account of capita! gain of Rs 7,25,53,044/- and Agriculture income of Rs.7,25,53,044/- in reassessment u/s 147 though the Assessing Officer entertained Change Of Opinion.

3. The CIT (A) erred in not giving direction to the A.O to physically verify the suitability of subject lands for cultivation and ought to have got the tests like nature of soil, irrigation facilities like bore well etc before giving weightage to the vague and unsubstantiated proceedings and statements of the A.O and confirming the additions, in spite of specific letter to that extent was filed by the assessee."

2.3 The grounds raised by the Revenue read as under :

"1. The finding of the CIT (A) in holding that M/s. ISIL acted as an agent, accommodator, etc. is perverse, since the such circumstance is not borne out of record.

2. The CIT (A) erred in not taking into consideration the relevant material and erred in taking into consideration the irrelevant material.

3.The findings of the CIT (A) in holding that the registration of agreement for transfer of immovable property is optional for the purpose of income-tax, but in a case of sale, u/ s.54 of Transfer of Property Act, registration is necessary is perverse.

4. The learned CIT (A) was erroneous in holding that under the provisions of Income Tax Act, the definition of 'transfer' as defined u/ s.2(47) of the Act is different from 'sale' as defined u/ s.54 of Transfer of Property Act. The said observation of the CIT (A) is baseless and untenable.

5. The CIT (A) ought to have seen that under any agreement for transfer of an immovable property, when possession of the property is delivered under the agreement, the said document shall necessarily be registered in terms of the provisions of Sec. 17 of the Registration Act, 1908. Thus, the Agreement of Sale-cum-GPA could not have said to be completed without being registered first.

6. The CIT (A) ought to have seen that Sec. 49 of the Registration Act mandates that an unregistered document cannot be received in evidence by any authority. The assessee therefore created a sham and nominal registered Agreement of Sale-cum-GPA to evade taxes.

7. The CIT (A) ought to have seen that the document of sale was registered prior to the registration of Agreement of Salecum-GPA.

8. The findings of the CIT (A) are wholly erroneous in as much as the Sale Deed between IRMAC and PBEL services apparently was executed and registered prior to the registration of the Agreement of Sale-cum-GPA, which is evident from the record of the Sub-Registrar Office.

9. The CIT (A) failed to take into consideration the statement made by the Sub-Registrar before the Assessing Officer to the effect that the sale deeds in respect of both the properties were presented and registered before presentation and registration of respective Agreement of Sale-cum-GPAs.

10. The learned CIT (A) ought to have seen that the Agreement of Sale- cum-GPA was a sham and nominal document created and devised by the assessee to evade the capital gains tax.

11. The learned CIT (A) grossly erred in holding that the AGPA is not the only method of transfer of property, since the definition of transfer of capital asset under Section 2 (47) of the Income Tax Act provides for other procedures also, while wholly ignoring the blatant deception of the Assessee in creating fallacious and misleading AGPA which was submitted for registration after submission of the Sale Deed for registration.

12. The learned CIT (A) grossly failed to take in to consideration, the fact that the Sale Deed in respect of Property Shazadi Begum Village comprising Ac 6-00 Gts. Was initially kept pending for registration vide P.No. 12/ 2007 was subsequently allocated document number as 584 of 2007 by the SRO, although it was presented prior to the presentation of AGPA and likewise the AGPA was also calculatingly been allotted the registration number 442 of 2007, even though it was presented for registration after to the presentation of the Sale Deed.

13. The learned CIT (A) grossly failed to take in to consideration, the fact that the Sale Deed in respect of property at Jalapally village comprising Ac 16-09 gts. Was given registration number as 1008 of 207 by the SRO, although it was presented prior to the presentation of the AGPA and likewise the AGPA was also calculatingly been allotted the registration number 1007 of 2007, even though it was presented for registration after to the presentation of the Sale Deed.

14. The learned CIT (A) failed to look in the registration markings and endorsements on the Sale Deed as well as the AGPA, which show that the Sale Deed was kept under pending registration category with an office mark on the face of the document as P. No. 12 of 07 and the presentation of the document as 19th January 2007 and similarly the registration marks on the AGPA is evident that the it was presented on 20th January 2007.

15. The learned CIT (A) failed to look at the sworn statement of Sri. T. Anantha Ram, the Sub-Registrar, who categorically stated that the Sale Deed was dept as pending registration document with No. P. 12/ 07 which was in fact presented on 19th January 2007 and likewise he also stated that the AGPA was in fact presented on 20th January 2007.

16. The learned CIT (A) failed to look at the due diligence report of the Advocate, who on behalf of the buyer PBEL Real Estates, furnished his legal opinion which only disclosed the title of KNRC over the subject lands and not anyone else. Even the News Paper notification of the proposed sale transaction only speaks about the title of KNRC over the subject lands and not of the IRMAC Services.

17. The learned CIT (A) failed to look at the vital fact that the total Sale Price of the subject land was shown as Rs. 3,75,000,00/- (Rupees Three Crores Seventy-Five Lakhs) in the Agreement of Sale-cum-GPA dated 18- 01-2007 and virtually the even dated Sale Deed shown the sale price as Rs. 16,20,00,000/ - (Rupees Sixteen Crores Twenty Lakhs) . This fact itself goes to prove that the Agreement of sale-cum-GPA was fictitious and deceptive document.

18. The learned CIT (A) failed to look more closely at the payment mode in both the Agreement of sale-cum-GPA as well as in the Sale Deed. In the AGPA dated 18-01-2007, the sale price was shown to have been paid by way of a cheque dated 19-01-2007 and whereas in the Sale Deeds, the payment was shown to have been paid by way of a Demand Draft dated 18-01-2007.

19. The learned CIT (A) failed to examine both registered instruments more closely which would show that the AGPA was a sham and nominal document only giving a false impression that there was a prior sale agreement between IRMAC Services and the assessee.

20. The learned CIT (A) ought to have seen that by the date of sale by M/s. IRMAC Services in favour PBEL, M / s. IRMAC was neither the owner of the land nor the GPA holder of the property. It was the assessee who was the owner of the property on the relevant date."

3. The brief facts of the case are that assessee is a public limited company engaged in the business of Civil Contract works. Assessee filed its return of income for A.Y. 2007-08 on 24.10.2007 declaring total income of Rs.20,21,95,340/-. Later, the case was selected for scrutiny and assessment was completed u/s 143(3) of the Income Tax Act, 1961, on 31.03.2009, assessing the total income of Rs.20,45,15,769/-. In this case, survey was conducted on 09.02.2010 and based on the impounded documents found during the course of survey, the case was reopened by issuing notice u/s 148 of the Act dt.29.03.2010 and notice was served on the assessee on 30.03.2010, for which assessee requested that the return already filed maybe treated as a return in response to notice u/s 148 of the Act. The assessee company has furnished the information from time to time and finally, the Assessing Officer after verification of all the information available on record, including the replies given by the assessee to the show cause notices issued, completed the assessment interalia making additions of(i) Rs.1,75,000/-by treating the agricultural income as unexplained credit (ii) Rs.1,88,34,670/- by making disallowance

from the claim of interest for not charging interest on advances given to sub-contractors (iii) Rs.75,00,000/- by making lumpsum disallowance out of expenditure, (iv) Rs.54,11,46,794/- on account of computing the short term capital gains, by considering sale consideration at Rs.60.00 crore in the hands of the assessee by virtue of sale deeds in favour of M/s. PBEL Real Estates India Pvt. Ltd., (PBEL) instead of Rs.13.89 crore adopted by the assessee by virtue of Agreement of Sale cum Irrevocable GPA in favour of M/s. IRMAC Services India Limited (ISIL). Assessment was also made in the hands of M/s. ISIL, assessing the gains pertaining to sale of same lands to PBEL, simultaneously on protective basis. Thereafter, the Assessing Officer assessed the total income of the assessee at Rs.77,21,72,253/- and passed assessment order on 31.12.2010 u/s 143(3) r.w.s. 147 of the Act.

4. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the ld.CIT(A), who granted partial relief to the assessee.

5. Feeling aggrieved with the order of ld.CIT(A), assessee and Revenue are now in appeal before us.

5.1. Firstly, we take the appeal of assessee in ITA 650/Hyd/2017.

GROUNDS 1 TO 5 and Additional Ground 1:

6. It was the contention of the assessee that reopening was made by the Assessing Officer on the basis of the audit report and that the same was not in accordance with law. Further, it was submitted that during the course of survey, statements were recorded and based on those statements, the Assessing Officer has reopened the assessment. Lastly, it was submitted that the Assessing Officer has wrongly concluded that the land in question is a capital asset and not an agricultural land and therefore, the reopening made by the Assessing Officer is without any basis. The ld.AR in the written submissions has mentioned as under :

"6. In so far as the initiation of proceedings u/s 147 is concerned, the appellant submits briefly as under:

a) The basis of reopening is an audit objection of the Govt. Audit party which is not accepted by the department.

b) As there are decisions to the effect that the re-opening cannot be done u/s 147 based on audit objection, the Assessing officer staid to have conducted a survey which is not valid. The data based on which notice u/s 148 is said to have been issued is based on a survey which is not a valid one.

c) The Assessing officer also based the re-opening on the statement said to have been recorded during survey and all such statements were recorded behind the back of the assessee and during the cross examination, it was proved beyond doubt that the statements were not judiciously and correctly recorded by the Assessing officer.

d) In view of the above the notice issued is not valid both because it was based on an audit objection and because of difference of opinion entertained from the

7. Per contra, ld.DR had submitted that the ld.CIT(A) while dealing with the issue at pages 6 and 7 in para 4 of his order has decided the issue as under :

> *"4.0 During the course of the appeal proceedings, the submissions of the appellant on the issues raised through additional grounds, were admitted as additional evidence and forwarded to the AO, for further examination and submission of the Remand Report, in response to which the report was furnished by the AO vide letter dated 14-07-2016, received in this office on 15-07-2016, through Additional CIT, Central Range-2, Hyderabad. The report was based on the information collected by the AO, by carrying out further enquiries and cross-examination of the concerned persons/authorities. The same are placed on record, and formed part of this order, as applicable/required.*
>
> *5.0 Though the appellant had raised separate ground on the issue of reopening of assessment vide the additional grounds as referred above, it was not elaborated in detail and also not insisted upon by the appellant during the appellate proceedings, before CIT(A). Further, it may be relevant to observe that the findings of survey and suspicious nature of transactions in land, in quick succession by the vendee, and also the intricacies involved in Registration Procedures, there was a genuine reasons for the AO, at the stage of assessment to believe that the capital gains were under assessed. Further, the information gathered during survey proceedings was clearly indicating that the lands under sale during the year were not agriculture lands, by virtue of their location and the utility and the capital gains on sale of such lands were not eligible for exemption, as claimed by assessee. Thus, on these facts / information, it is reasonable to hold that reopening proceedings are justified and upheld. The ground related to this issue, thus can be treated as dismissed."*

8. We have heard the rival submissions and perused the material on record. Admittedly, the assessee had entered into Agreement for Sale cum Irrevocable GPA with M/s. IRMAC Services India Limited (M/s.ISIL) for sale of land admeasuring Ac.16.09 guntas located at Village Jalapally, for a consideration of Rs.10,14,06,250/- and for sale of land admeasuring Ac.6.00 guntas

located at Shahzadi Begum for a consideration of Rs.3.75 crore registered vide document nos.442/2007 and 1007/2007, on 20.01.2007 and 20.01.2007, respectively. The assessee has not shown any capital gain in the return of income on the pretext that the asset is not a capital asset and rather it is an agricultural asset and therefore, the Assessing Officer, after recording the statements of Shri A Vittal Goud, Sub-Registrar Officer of Champapet and the Director of M/s. PBEL namely, P. Ananda Reddy, has reopened the assessment. At page 106 of paper book, Volume 1 of the assessee, the reasons for reopening are given as under :

> *"1. Survey u/s 133A was conducted on 9-2-2010 during the course of which certain land sale documents were found. Land documents revealed that assessee company sold 16.09 acres of land bearing survey numbers 182&183 located at Jalpally village, Saroornagar Mandal whose peaceful possession was enjoyed by company for sale consideration of Rs 10,14,06,250/-, earned profit of Rs 5,21,35,054/-. Post survey enquiries i.e enquiry in nature of physical journey undertaken between land bearing 182 &183 at Jalpally village of Saroornagar mandal and Rising Sun High School with house number 18-13-132/B7/A located in Chandrayangutta, an area within old municipal limits of Hyderabad via Lakshmiguda, Odamgadda, Bandlaguda cross roads showed that the land is situated at a distance of 6.0 Km from old municipal limits of Hyderabad. Therefore as per section 2(14)(iii) of IT Act the above land can't be treated as agricultural land as it is situated within distance of 8Km from municipal limits of Hyderabad. Profit earned on sale of land Rs 5.21 Crores which is claimed as exempt u/s 2(14) can't be allowed as it is not agricultural land within the meaning of that section. Therefore land sold by company is urban land. Profit earned on sale of urban land is taxable. Hence income to the extent of Rs 5.21 Crores has escaped assessment for assessment year 2007-08.*
>
> *2. Similarly 5.40 acres land bearing survey numbers 3/A,3/E,4/1/A,4/1/1/E at Shahajadi begum village, Shamshabad mandal is also located at a distance of 6.0 KM from Rising sun high school with house number 18-13-132/B7/A located in Chandrayangutta, an area within old municipal limits of Hyderabad . It was sold during the year for sale consideration of Rs 3.75 Crores on which profit of Rs. 2,04,17,990/- was earned, claimed as exempt. Therefore as per section 2(14)(iii) of IT Act the above land can't be treated as agricultural land as it is situated within distance of 8Km from municipal limits of Hyderabad. Profit earned on sale of*

land Rs 2.04 Crores which is claimed as exempt u/s 2(14) can't be allowed as it is not agricultural land within the meaning of that section. Therefore land sold by company is urban land. Profit earned on sale of urban land is taxable.

3. Item No 7 of the minutes of the meeting of board of directors of assessee company held on 30-09-2005 which was impounded during survey states that the assessee company acquired lands for purpose of carrying out real estate business but not for purpose of carrying out agricultural operations. Lands under consideration were also found to be sold within span of 3-4 months of their purchase.

4. Information collected from SRO Champapet, Shamshabad shows that 22.09 acres of land sold by assessee company to M/s Irmac Services (India) Pvt Ltd for Rs 13.89 Crores was sold on same day to M/s Pble India Ltd by that company for consideration of Rs 60 Crores. Sale agreement cum GPA between assessee company and M/s Irmac Services India Pvt Ltd, sale deed between M/s Pble India Ltd and M/s Irmac Services India Pvt Ltd was entered, presented on same date and in particular same time i.e 20-1-2007 between 4-5 pm with respect to 16.09 acres of land at Jalpally village. Further in case of 6 acres of land in Shahajadi Begum village, Shamshabad mandal, sale deed between M/s Irmac Services India Pvt Ltd and M/s Pble India Pvt Ltd was entered and presented on 18-1-2007 & 19-1-2007 respectively whereas sale deed between assessee company and M/s Irmac Services India Pvt Ltd is entered, presented on 20-1-2007 in Champapet SRO which do not hold jurisdiction. Another sale agreement between same parties with respect to same land was entered and presented on 18-1-2007 and 19-1-2007 respectively in Shamshabad SRO which is jurisdictional office."

5.1. In our view, what is required to be ascertain at the stage of reopening is, whether there is any tangible material which shows the escapement of income or not. Though assessee has entered into AGPA on 18.01.2007 / 20.01.2007 which were submitted for registration on a later date a total consideration of Rs.13.89 crores and whereas on 20.01.2007 the KNR (assessee) has sold the land for a total consideration of Rs.60,00,75,000/- (Rs.16.20 crore and Rs.43.80 crore) by registered document no.584/2007 and 1088/2007 through its GPA. In our considered opinion, once the opinion based

by the Assessing Officer which was based on the document which shows the escapement of income, then the Assessing Officer was within his right to reopen the assessment. Furthermore, the Assessing Officer at the time of original assessment either examined the fact whether the land is an agricultural land or the capital asset within the meaning of 2(14)(iii) of the Act. The Assessing Officer has brought on record the evidence that the impugned land cannot be treated as an agricultural land as the same is falling within 8 kms from the municipal limits of Hyderabad and therefore, it is not exempt u/s 2(14) of the Act as claimed by the assessee. In our view, no opinion was formed by the Assessing Officer at the time of original assessment with respect to the nature of land and also the same is exempt u/s 2(14) of the Act. At the stage of reopening, the Assessing Officer is only required to frame a prima facie of the view about the escapement of income. In the present case, we do not find any merit in the submissions of the assessee and accordingly, the reopening made by the Assessing Officer is found to be valid. Thus, ground nos.1 to 5 and additional ground no.1 raised by the assessee is dismissed.

Ground no.9 and Additional Ground No.3

6. Before us, the ld.AR has submitted that the land in question was an agricultural land and therefore, is not a capital asset within the meaning of Section 2(14)(iii) of the Act. The ld.AR has further submitted that agricultural activities were going on in the said land and for that purposes, the ld.AR has drawn our attention to pahanis

placed at pages 142 and 149 paper book. Further, it was submitted that the land is part of Shamshabad Municipality and the distance from the Shamshabad Municipality to the land in question is more than 8 K.M and hence, it cannot be considered as non agricultural land. Therefore, capital asset cannot be brought to tax. The ld.AR further relied upon the decision of ITAT in the case of Srinivas Pandit (HUF), which was later on confirmed by the decision of Hon'ble High Court of Andhra Pradesh. It was contended that the distance of agricultural land in question cannot be measured from the Hyderabad Municipality area and it should be measured from Shamshabad Municipality. In this regard, the written submissions filed by the assessee are to the following effect :

> *"7. The assessee's another ground of appeal is that capital gain is not taxable as the land is not a capital asset within the meaning of Sec.2(14) of the I.T. Act.*
>
> *8. In so far as the nature of the land sold is concerned it is humbly submitted that the land is agricultural in nature at the time of purchase. It is shown as agricultural land in the Revenue Records. The agricultural operations were conducted on the remaining land for the later assessment yeas i.e. 2009-10 and onwards. The Income-Tax authorities have made the addition on the ground that agricultural income was not derived from the said land. In fact out of the total land purchased during the financial year 2006-07 a part of the land was sold and rest of the land remained with the appellant. This part of the land remained was cultivated by the appellant even for the other later assessment years 2008-09 and onwards. The assessments for the assessment years 2009-10 to 2012-13 have been subjected to appeal before the Hon'ble ITAT. The Hon'ble ITAT vide common order in ITA No.983 to 986/Hyd/2015 (copy placed at pages No.230 to 269 of the paper book volume1) held that the agricultural income was derived and, therefore, the land is to be considered as agricultural land.*

9. Further, the appellant also filed copies of the letters of confirmation from the lessees of the agricultural land who have cultivated the land. The Assessing officer's observation in the assessment order are not based on the facts. The land is agricultural in nature. Here and there some boulders may be there but the land is quite useful for agriculture. This fact has been certified by various authorities and copies of the Soil Testing Report confirms that the soil is fit for agricultural operations and the agricultural operations have been carried out as mentioned at page No.141 of the paper book. Even the Mandal Officers and the Agricultural Officers have recorded the land to be agricultural in the Pahani Patrikas issued by them. Copies of the Pahani Patrikas are placed at pagesNo.142 to 149 of the paper book (vol.1). Therefore, it is not correct for the authorities to mention that it is not an agricultural land.

10. In so far as its proximity to the municipalities, it is to be considered that a part of the land is in Shamshabad Municipality. Shamshabad Municipality is notified separately and the distance from the Shamsbhabad Municipality to the agricultural lands is more than 8 Kms. The notification issued in so far as Shamshabad Municipality is concerned mentions the distance to be 5 kms. Shamshabad is more than 8 kilometres from the land. Therefore, the land in the Sahebjadi Begum village of Shamshabad Mandal cannot be considered as the non agricultural and cannot be brought to tax under the head "Capital Gains".

11. In so far as Saroornagar Municipality is concerned, the said Municipality is not notified. The assessee relies on the decision of the Hon'ble ITAT, Hyderabad in the case of Srinivas pandit (HUF). The above order is confirmed by the High Court of Andhra Pradesh. Therefore, the distance, if any, has to be counted from the Saroornagar Municipality. It cannot be measured from the limits of Hyderabad Municipal area.

12. The appellant also submits that a detailed discussion is made in the case of Srinivas Pandit by the Hon'ble ITAT vide order in ITA No.56/Hyd/2007 dated 23.4.2010, a copy of which is annexed for kind perusal.

13. This view is supported by the decision of the Andhra Pradesh High Court in the same case and Karnataka High Court in the case of Commissioner of Income-Tax Vs Madhukumar N.(HUF) reported in (2012) 23 taxmann.com 341 (Kar.) a copy of which is submitted for kind perusal. These facts clearly indicate that the land is beyond the notified area.

14. Further, even if it were to be considered that the distance is to be taken from Hyderabad Municipality, it is submitted that the land is covered by various lands on all the four sides and there is no approach to the land. There is no road upto the land. It is not known from which place to which place the Assessing Officer has measured the distance. It is to be gathered from the Hyderabad Municipality to the land. There is no approach road to

the land and, therefore, the Assessing Officer could not have taken the distance till the land. In view of the above, the land cannot be considered as capital asset. The land is to be taken as agricultural land and not as a notified land. Therefore, the capital gain arising there from is exempt from tax."

7. Per contra, ld.DR has submitted that the contention of the assessee is without any basis. The ld.DR further submitted that for the purpose of determining the character of land whether it is agricultural land or not, the distance of land is required to be measured as per the definition of agricultural land as provided under the Income Tax Act. It was the contention of the ld.DR that the nearest municipality falling near to the impugned land is Hyderabad municipality and the distance from Hyderabad Municipality is less than 8 km and therefore, the Assessing Officer has rightly concluded that the land in question is in nature of capital asset.

8. We have heard the rival contentions of the parties and perused the material on record. For the purpose of determining the controversy, it is essential to note the definition of agricultural land. The definition of agricultural land as per section 2(14)(iii) read as under :

Section 2(14) in The Income Tax Act, 1961
(14)
"capital asset" means—
(a) property of any kind held by an assessee, whether or not connected with his business or profession;
(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);
[(c) any unit linked insurance policy to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth provisos thereof,] but does not include—

(i) any stock-in-trade [other than the securities referred to in sub-clause (b)], consumable stores or raw materials held for the purposes of his business or profession ;

(ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes— (a) jewellery;

(b) archaeological collections;

(c) drawings;

(d) paintings; (e)sculptures; or (f)any work of art.

Explanation 1.—For the purposes of this sub-clause, "jewellery" includes—

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel; (b)precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

Explanation 2.—For the purposes of this clause—

(a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;

(b) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(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 ; or (b) in any area within the distance, measured aerially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

Explanation.—For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

(iv) 6½ per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;

(v) Special Bearer Bonds, 1991, issued by the Central Government ;

(vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 notified by the Central Government.

Explanation.—For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever;

9. From the definition of the agricultural land, what is required to be seen is the distance of the land from the nearest municipality. From the definition of 'agricultural land', it is abundantly clear that what is required to be seen is whether the distance of the land from local limits of any nearest municipality, provided by the Act. The Assessing Officer at page 46 of his order in paras 5 and 6 had captured this aspect in the following manner :

"5. Even the profit on sale of lands of Rs.7,25,53,044/-, based on AGPA mentioned above, was not offered to tax by you in the return of income, on the false pretext that the lands sold are agricultural lands not taxable under the provisions of Income Tax Act, 1961. However, as clearly pointed out vide this office letter dated 19.11.2010, the aforesaid lands are very well covered under the provisions of section 2(14) of the Income Tax Act, 1961, being in the nature of capital asset, since they are situated within 8 K.M. of erstwhile Municipal Corporation of Hyderabad. In the said letter, a copy of letter No.1529/ACP/C4/GHMC/2010, dated 12.11.2010, received from Assistant City Planner, Town Planning Section,. Circle No.4, GHMC, Charminar, Hyderabad, giving details of territorial boundary limits of erstwhile Municipal Corporation of Hyderabad, was enclosed and even an opportunity was given to you for physically checking the measurements along with the officials of this Department, from the end of the territorial boundary limits of the erstwhile MCH to the lands sold by you as mentioned above. Your reply was due by 30.11.2010 and so far no reply has been received from your side till date. 1, therefore, presume that you have no explanation to offer in this regard. Since the land falls well within 8 K.M. of the municipal limits of notified municipality i.e. erstwhile Municipal Corporation of Hyderabad, as measured from two different road routes (6.5 K.M. and 6.9 K.M. as stated in the aforesaid letter) and in terms of aerial route, the distance would be far lesser, there is no doubt whatsoever that the aforesaid lands are capital asset within the meaning of section 2(14) of the Income Tax Act, 1961.

6. A further letter was sent to you dated 03.12.2010, refuting your claims that agricultural activities were carried out in the said lands and copy of letter dated 25.03.2010 of Secretary of Gram Panchayat, Jalpally Village was given, which clearly shown that the alleged tenant cultivators, shown as residents of Jalpally Village, are in fact non-existent. Similarly, Physical Inspection Reports dated 04.03.2010 of the then Deputy Commissioner of Income Tax, Circle-2(1), Hyderabad, carried out along with the VROs and Surveyors of Saroornagar Mandal and Shamshabad Mandal, which indicated that the lands are rocky, barren and dry lands, was enclosed with the said letter and you are also given an opportunity to produce the alleged tenant cultivators by 10.12.2010. As no reply has been received till date, I presume that you have no explanation to offer in this regard. Further, summons have been sent to various persons mentioned by you as tenant cultivators by Speed Post and all of them have returned unserved, which again proves that the persons are non¬existent. Even as per your ledger (copy of the relevant extract enclosed), under the head 'Miscellaneous Receipts' , the following entries are shown :

Date & Voucher	*Name*	*Amount (Rs.)*	*Narration*
31.08.2006 - Journal Voucher 08088	*Mr.Phanikar*	*1,00,000/-*	*Being agricultural income received by Mr.Phanikar and same accounted*
30.11.2006 Journal Voucher - 11058	*Mr.Phanikar*	*75,020/-*	*Being agricultural income received by Mr.Phanikar and same accounted*

Mr. R.S.N. Murthy, Accounts Manager of your company has stated that Mr.Phanikar is one your own employees. The amount is apparently received in the form of cash and is only a book entry from your own employees and does not have any evidentiary value as regards agricultural activity. Moreover, when the lands were registered only in April-June, 2006, which represents Summer months, there is no way a crop can be grown and sold in August and November, especially when seen from the fact that the lands are dry lands without irrigation. Given the aforesaid facts and circumstances, it can be safely concluded that no agricultural activity is carried out in the aforesaid lands and the claims made by you in this regard are wrong.

10. The above said finding of the Assessing Officer sought to be rebutted by the ld.AR by saying that the distance of land is to be measured from Shamshabad Municipality and not from Hyderabad Municipality. In our view, the above said interpretation of the ld.AR is without any basis and the statue uses the word **"any"** municipality. The word "any" is a word of wide amplitude, and it encompasses the municipality which is closest and nearest to the land in question that is to say it has not specify whether the land should form part of Shamshabad Municipality or Hyderabad Municipality. The distance is to be measured with reference to the geographical location of the Municipality which is nearest to the subject matter of land. What is required to be seen is the closeness and the distance of that particular land from the nearest municipality.

11. In the present case, undoubtedly, the land is situated within 8 km of the municipal area of Hyderabad municipality and therefore, it is required to be considered as capital asset and therefore, the contention of the ld.AR that it is not a capital asset is without any basis.

12. The other contention raised by the assessee is with respect to carrying out of the agricultural activities by the assessee in the land.

13. We have gone through the record and also gone through the submissions made on behalf of both the parties. In our view, what is essentially required to be proved by the assessee is that the assessee has been carrying out the agricultural activities for more than 2 years and for that purpose, the assessee was required to show the necessary entries in the revenue records coupled with evidence of

carrying out the agricultural activities. In the present case, as submitted by the assessee, it was found during the course of inspection of the land that the land was full of bulldoze and rocky area which is incapable of being used for any agricultural purposes. Further, it was submitted that there was no agricultural facility or irrigation facility in the area and therefore, it is not possible to carry out agricultural activities on the rocky land. The Assessing Officer has also brought on record that the nature of land has not been shown as agricultural land in the records of the assessee. However, the assessee has categorically mentioned that no agricultural activity was carried out in the existing premises. Further, the Revenue record filed by the assessee are for the period not relevant for determining the nature of agriculture of land as the soil health card was dated 12.02.2014. Similarly, the other document at page 142 to 149 of paper book, volume 1 is for the A.Y. 2015-16 and hence, cannot be relied upon for the purpose of arriving at the conclusion that the land was agricultural in nature. Even otherwise, as the land is situated within the municipal limits of the municipality, then the same is required to be treated as capital asset within the meaning of the Act. In view of the above, Assessing Officer has categorically mentioned that no agricultural activity is carried out in the premises.

14. We are of the considered opinion that the land in question was not an agricultural land within the meaning of section 2(14) of the Act. Hence, we have no hesitation to say that the land is an agricultural land. The reliance of the ld.AR on the decision of Hon'ble High Court of Andhra Pradesh is also misplaced and failed

to consider unambiguous language used in the statute which clearly states that the distance is required to be measured from any municipality. In our considered opinion, the decision relied upon by the ld.AR is not applicable to the facts of the present case and accordingly, the same is not binding. With respect to the decision in the case of assessee in ITA No.946/Hyd/2015 and others is concerned, we are of the opinion that the decision is not pertaining to the land in question as the assessee in the said case has claimed itself to be the owner of the land and whereas in the present case, the survey number is different and further, the land has admittedly been transferred by the assessee in favour of PBEL in January, 2007, and therefore, there is no occasion for the ITAT to adjudicate about the nature of land in ITA No.946/Hyd/2015 for A.Y. 2009-10 to 2012-13. In our view, once the statute is clear and unambiguous, the same is required to be applied without any interpretation. In view of the above, the second argument of the assessee is also dismissed. Accordingly, ground no.9 and additional ground no.3 raised by the assessee are dismissed. The other grounds, if any, will be taken care of while deciding the Revenue appeal.

15. In the result, the appeal filed by the assessee is dismissed.

16. Now we will deal with the appeal of Revenue in ITA No.629/Hyd/2017.

17. The ld.DR has drawn our attention to para 10 at page 63 of the assessment order, wherein the assessee was given a show cause notice by the Assessing Officer asking the assessee to reply for the same. The assessee had given a point wise reply to the notice given by the Assessing Officer. However, the Assessing Officer was not satisfied with the reply and thereafter, the Assessing Officer has recorded the finding in para 11 to 12.2 as under :

> *"11. The issues raised by the assessee in it's reply dated 28.12.2010 have already been dealt with at length and have been sufficiently answered in preceding paras 4, 5, 8 and 9 above, which prove beyond 'a pale of doubt that the actual VENDOR is M/s.KNR Constructions Ltd. and actual VENDEE is M/s.PBEL Real Estate India Pvt. Ltd. and the AGPA with M/s.Irmac Services India Ltd. is only a colourable device entered into with a view to reduce taxable income on account of capital gains in respect of the sale of impugned lands, a fact which has been stated by M/s.Irmac Services India Ltd., apart from being proved by the Department. In addition to what is stated in paras 4, 5, 8 and 9 above, the following issues are reiterated :*
>
> *11.1. Though the name of M/ sirmac Services India Ltd. has been shown as the vendee in the AGPA, actually in reality it acted as an agent and accommodator for the assessee company, as stated by M/s Irmac Services' India Ltd. in it's letter filed on 16.12.2010, referred to in para 9 above and enclosed as Annexure-23 with this assessment order.*
>
> *11.2. The possession of the land was never handed over to M/s.Irmac Services India Ltd. as stated by M/s. Irmac Services India Ltd. in it's letter filed on 16.12.2010, referred to in para 9 above and enclosed as Annexure-23 with this assessment order.*
>
> *11.3. The sale consideration due to M/s.KNR Constructions Ltd. is to be taken as what is mentioned in the sale deed and not the AGPA, as the title to the impugned lands passed on from M/s.KNR Constructions Ltd. to M/s.PBEL Real Estate India Pvt. Ltd.„ who are stated in the Sale Deeds as the VENDOR and VENDEE respectively. M/s.Irrnac Services India Ltd., has only acted as an Agent of M/s.KNR Constructions Ltd. and not as the Principal.*
>
> *11.4. The title to the lands have passed on from M/ s.KNR Constructions Ltd. to M/s.PBEL Real Estate India Pvt. Ltd., by virtue of the Sale Deeds relating to the impugned lands and not by virtue of AGPA. This fact has*

also been confirmed by the statements of the concerned State Government Registration Authorities i.e. Sub Registrars Shamshabad and Champapet, which are enclosed with this order vide Annexure Nos.17 and 18.

11.5. The receipt of sale consideration by M/s.Irmac Services India Ltd., acting on behalf of M/s.KNR Constructions Ltd., as it's GPA holder, is only a matter of application of income, as clearly stated in para 4(e), 5, 8.10, 8.11 and other paras above. As mentioned in para 9 above, M/s.Irmac Services India Ltd., in it's letter filed on 16.12.2010, has claimed that it only acted as an agent and benami of M/s.KNR Constructions Ltd., that it did not have any funds on the date of AGPA and the funds were eventually given to M/s. KNR Constructions Ltd. or to persons as per its directions. The said letter is enclosed as Annexure-23 with this assessment order.

11.6. The stamp duty, as applicable in case of sale of lands was not paid as far as AGPA is concerned. The correct stamp duty was paid only in respect of the Sale Deeds. This issue has been clearly discussed and brought in the statements of the concerned State Government Registration Authorities i.e. Sub Registrars Shamshabad and Champapet, which are enclosed with this order vide Annexure Nos.17 and 18. In case of both the AGPAs and the Sale Deeds, the details of Stamp Duty payment are given below :

Location	*Extent Acres*	*Stamp Duty as per AGPA (Rs.)*	*Stamp Duty as per Sale Deed (Rs.) @ 9%*	*Difference (Rs.)*
Jalapally, Saroornagar Mandal (Sy Nos.182 & 183)	*16.09*	*50,000/-*	*3,94,26,850/-*	*3,93,76,850/-*
Shahjadibegum Village, Shamshabad Mandal (Sy. Nos.3 & 4)	*5.403*	*50,000/-*	*1,45,79,900/-*	*1,45,29,900/-*
	21.493	*1,00,000/-*	*5,40,06,750/-*	*5,39,06,750/-*

i. AGPA really conveyed the title to the lands, then how come the stamp duty of only Rs.1,00,000/- is paid against the due stamp duty of Rs.5,40,06,750/- ? In case AGPA is to be taken as the valid title to the lands, have the State Government Authorities undercharged stamp duty to the extent of Rs.5,39,06,750/- ? , The answer lies in the statements of the Sub Registrars themselves. The AGPA does not transfer any valid title to the AGPA Holder. Hence, only a notional amount of Rs.50,000/- is charged as Stamp Duty. Real transfer has

taken place only between M/s.KNR Constructions Ltd. and M/s.PBEL Real Estate India Pvt. Ltd. vide the Sale Deeds wherein the correct stamp duty of Rs.5,40,06,750/- in respect of both the deeds is charged. Thus, the so called Agreement of Sale aim Irrevocable GPA is only an authorization given by M/s.KNR Constructions Ltd. to M/s.Irmac Services India Ltd., to act on it's behalf as it's agent and no title to the land has been conveyed at this stage. The tile , was conveyed only at the stage of Sale Deeds, wherein M/s.KNR Constructions Ltd. as VENDOR sold the impugned lands to M/s.PBEL Real Estate India Pvt. Ltd., as the vendee, with M/s.Irmac Services India Ltd., acting as an agent being the GPA holder.

ii. Even, for the sake of argument, if AGPA is to be taken as a document of transfer of land, why was only a notional amount per each deed of Rs.50,000/- charged as stamp duty, as against the stamp duty due on the consideration of AGPA in respect of both the documents of Rs.13,89,06,250/- ? If AGPA was really a document of transfer of tile to the land, an amount of Rs.1,25,01,563/- should have been paid as Stamp Duty for both the lands and not Rs.1,00,000/-. Thus, from this point of view also, it is very clear that there was neither any intention to transfer the tile at the stage of AGPA nor transfer took place at the time presentation of AGPA for registration. The actual transfer took place only at the time of presentation of the Sale Deeds in favour of M/s.PBEL Real Estate India Pvt. Ltd. by M/ s.KNR Constructions Ltd. with M/s.Irmac Services India Pvt. Ltd., acting as it's Agent. Thus, payment of notional amount of Rs.50,000/- per AGPA has not conveyed any title within the meaning of Transfer of Property Act or under any statute.

11.7. It is crucial to note the same of the VENDOR and the VENDEE, in the Sale Deeds relating to the impugned lands, which is reproduced below :

"M/s. KNR CONSTRUCTIONS COMPANY LIMITED, having registered office at IIIrd Floor, Akashganga Complex, Khairatabad, Hyderabad, represented by its Managing Director Sri M.Rajesh Reddy S/o M.S. REDDY aged 34 years Occ : Business R/o Illrd Floor, Akashganga Complex, Khairatabad, Hyderabad represented by GPA Holder M/s. IRMAC SERVICES INDIA LTD., having its registered office AT No.5, Navnirman Nagar, Jubilee Hills, Hyderabad represented by its Director Sri E. BADRINATH S/o. E. VENKAT MO aged 42 years,

(Hereinafter referred to as "THE VENDOR" of the First Part)

PBEL REAL ESTATE INDIA PVT. LTD., represented by its Director Mr Meir Boukris, S/o. Rafael Boukris, aged 46 years having its registered office at Wescare Towers, 16, Cenotaph Road, Teynampet, Chennai - 600 018

(Hereinafter referred to as "THE VENDEE" of the Second part)

If the title had passed on from M/s.KNR Constructions Ltd to M/s. Irmac Services India Ltd., at the stage of Agreement of Sale cum Irrevocable GPA itself, where was the need to mention the name of M/s.KNR Constructions Ltd. in the Sale Deed with M/s.PBEL Real Estate India Pvt. Ltd. ? This is a very crucial question and cannot be explained away as a technicality by the assessee. If indeed, the title has been passed on at the stage of AGPA, there is no need whatsoever to mention the name of M/s.KNR Constructions Ltd., as the VENDOR in the sale deed. It is again crystal clear that M/s.KNR Constructions Ltd., is the actual VENDOR at the stage of Sale Deed and M/sirmac Services India Ltd., as it's agent, .a fact admitted by M/s.Irmac India Services Ltd.

11.8. Thus, it is clear that the ingredients of transfer as mentioned in the Transfer of Property Act and also as dealt with section 2(47) of the Income Tax Act, 1961, are not in effect complied with, as far as AGPA between M/s.KNR Constructions Ltd. and M/s.Irmac Services India Ltd. The same have been complied with only in the Sale Deeds between M/s.KNR Constructions Ltd. and M/s.PBEL Real Estate India Pvt. Ltd., with M/s.Irmac Services India Ltd., acting as an Agent.

11.9. As stated in detailed in the preceding paragraphs, the amounts received and spent by M/s.Irmac Services India Ltd., are only application of income and cannot be reckoned for the purposes of claiming any expenditure as there are no conditions precedent in the Sale Deed. Therefore, the returns of income and other details of M/s.Irmac Services India Ltd., sought by the assessee from Asst. Commissioner of Income Tax, Circle-2(1), Hyderabad, are not relevant. In any case, there is a due procedure under Right to Information Act, which would have to be followed by Asst. Commissioner of Income Tax, Circle-2(1), Hyderabad, before issuing the details called for. In any case, as explained at length, the financial statements of M/s.Irmac Services India Ltd. and related issued being only in the nature of application of income, are not germane to the issue fo deciding the income of the assessee company

11.10. As mentioned in preceding paragraphs and as evidenced by the statements of the Sub Registrars, statements of the witnesses, entries in the Thumb Impression Register and other circumstances, it is clear that Mr. M.Rajesh Reddy, Executive Director of M/s.KNR Constructions Ltd., was completely aware of the transactions as regards not only the AGPA but also the Sale Deeds. Being a public listed company and a custodian of public wealth, the assessee cannot claim ignorance of something which happened in front of it, with it's complicity. How can a public listed company i.e. the assessee be silent witness when right in front of it, a property valued Rs.13,89,06,250/- was being transferred for Rs.60,00,75,000/-, on the same day, in it's Executive Director Mr. M.Rajesh Reddy was personally present at the Registrar Officer and affixed his thumb impressions ?

11.11. It is important to not only see what is "apparent" but also what is "real".

The 'sum and substance' of the transactions and the 'real nature' of transactions should be looked into to arrive at the truth. From the facts and circumstances of the case, there is no doubt that the AGPA is only a colourable device and the actual transfer took place between M/s.KNR Constructions Ltd. and M/s.PBEL Real Estate India Pvt. Ltd., vide the sale deeds. In this context, it is essential to note the judgement of Hon'ble Supreme Court of India in the case of McDowell & Co. Ltd. vs. Commercial Tax Officer [154 ITR 148 (1985)1, which is absolutely relevant given the facts and circumstances of the assessee's case.

12. Given the elaborate explanations and findings in this assessment order, I have no hesitation in holding that the'actual value of sale consideration accruing in the hands of M/s.KNR Constructions Ltd., is what has been stated in the Sale Deed and adopting the same, the short term capital gains on sale of impugned lands by the assessee is shown below :

Location	Extent Acres	Purchase cost (Rs.)	Sale price (Rs.)	Short Term Capital Gain(Rs.)
Jalapally, Saroornagar Mandal (Sy Nos.182 & 183)	16.09	4,92,71,196	43,80,75,000/-	38,88,03,804/-
Shahjadibegum Village, Shamshabad Mandal (Sy. Nos.3 & 4)	5.403	1,70,82,010	16,20,00,000/-	14,49,17,990/ -
	21.493	6,63,53,206	60,00,75,000/-	**54,11,46,794/-**

12.1. The aforesaid short term capital gain of Rs.54,11,46,794/- is taxable, as the impugned lands sold fall within the meaning of capital asset u/s.2(14) of the Income Tax Act, 1961, as per elaborate findings given in para 6 above.

12.2. The aforesaid income of Rs.54,11,46,794/- can also be taxed alternatively, as income derived on account of adventure in the nature of trade, the lands having been purchased and sold within a short period of time with a clear motive of earning profit therefrom. on account of adventure."

18. Feeling aggrieved with the addition made by the Assessing Officer, assessee filed appeal before the ld.CIT(A), who has granted the relief to the assessee.

19. Feeling aggrieved by the order of ld.CIT(A), Revenue appeal before the Tribunal and the Tribunal vide ITA No.98/Hyd/2012 and C.O.No.03/Hyd/2013 has remanded back the matter vide order dt.21.06.2013 as under :

"7. We have heard the rival submissions of the parties and we have perused the decisions on which reliance is placed from both the sides. The Tribunal while dealing with the subject-matter of the appeal in exercise of its power, it may allow the party to take up a new ground of appeal. In other words, the Tribunal has power to permit the assessee to raise a new ground of appeal, not set forth in the memorandum of appeal, even without formal amendment of the grounds set forth in the memorandum of appeal provided that a new ground does not involve a further investigation into the facts. This power of Tribunal is spelt out in Rule 11 of ITAT Rules, 1963. Hon'ble Punjab & Haryana High Court has held in the case of Vijay Kumar Jain v. CIT (99 ITR 349) that the Tribunal may allow a party to press a ground which he does not press before the first appellate authority although he has taken and included in the grounds of the first appeal. The proposition of law on the issue of admission of additional or new grounds by first appellate authority was laid down by the Hon'ble Supreme Court in the case of Jute Corporation of India Ltd. v. CIT(187 ITR 668) and in the case of National Thermal Power Co. Ltd. v. CIT (229 ITR 383) wherein it was held that the same will apply to appeal before Tribunal. Hon'ble Allahabad High Court in the case of CIT v. Mohd. Ayyub & Sons Agency (197 ITR 637) has held that the power of the Tribunal to permit any party to the appeal to raise the question of jurisdiction, which goes to the root of the matter and does not involve further investigation into facts, cannot be disputed on the plain reading of Rule 11 of the ITAT Rules, 1963. Indeed on such a plea being taken, the Tribunal is under a statutory obligation not only to entertain the plea but also to decide the same after providing sufficient opportunity of being heard to the other side. Similar views have been taken by Hon'ble Delhi High Court in the case of CIT v. Mahalaxmi Sugar Mills Co.

ITA 44/Hyd/2013 M/s. KNR Constructions, Hyderabad Ltd.(200 ITR 275); by the Hon'ble Bombay High Court in the case of Ahmedabad Electricity Co. Ltd. v. CIT (199 ITR 351) and in the case of Baby Samuel v. Asstt. CIT(262 ITR 385); and by the Hon'ble Rajasthan High Court in the case of Mewar Sugar Mills Ltd. v. CIT (203 ITR 415) wherein it has held that when an issue was not specifically taken in the memorandum and grounds of appeal but mentioned in the written submissions filed before the Tribunal and specifically argued at the time of the final hearing of the appeal, the Tribunal cannot refuse to adjudicate upon that issue on the merits of the ground that

no such ground has been taken specifically in the grounds of appeal. Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. (supra) has held:

"...The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of the item. There is no reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the CIT(A). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. The Tribunal should not be prevented from considering questions of law arising in assessment proceedings, although not raised earlier. The view that the Tribunal is confined only to issues arising out of the appeal before the CIT(A) is too narrow a view to take off the powers of the Tribunal.

Thus, the settled legal position, which emerges from the aforesaid judicial pronouncements, is that the purpose of assessment proceeding is to tax/assess the taxable liability/income of the assessee correctly in accordance with law and if the assessee is entitled to certain relief, deduction or benefit, the assessee should not be denied or deprived of it, even if the claim pertaining to the same is made for the first time before the Tribunal during pendency of appeal before it. In the present case, the ITA 44/Hyd/2013 M/s. KNR Constructions, Hyderabad issues raised in additional grounds are the legal issues which go to the root of the matter and for deciding these legal issues no new facts are required to be considered as all the facts are already recorded in the orders of the authorities below. In this view of the matter, respectfully following the decision of the Apex Court, we admit the additional grounds raised by the assessee. However, the said grounds raise a legal issue, and the same having not been raised before the first appellate authority, the CIT(A) has no occasion to examine the matter on that legal aspect. We accordingly, set aside the impugned order of the CIT(A), and restore the matter to the file of the CIT(A), with a direction to examine the additional grounds raised by the assessee before us, and then dispose off the appeal before him afresh on the merits thereof. At this stage, we refrain from adjudicating on other grounds raised by the assessee, as the legal issue in the first place, is to be decided first by the CIT(A)."

20. The contention of the ld.DR was that the relief granted by the ld.CIT(A) was on the basis of the fact that the transactions entered by the assessee with IRMAC and PBEL on independent transaction and transfer has taken place pursuant to the first AGPA No.442/2007 and 1088/2007 dated 20.01.2007 within the meaning of Section 53A of the Act and for that purposes, ld.CIT(A) had invoked the provisions of Section 2(47)(v) and (vi) of the Act. The ld.DR has drawn our attention to the finding of ld.CIT(A) in this regard, which is available at page no.9.5.2 of the order which is to the following effect.

> *"9.5.2. In this context, it may be relevant to look at the provisions of the Income Tax Act that had adopted its own definition of 'transfer', distinct from the definitions in other laws like Transfer of Property Act. A fiction was created for the definition of transfer in relation to capital asset under the Income Tax Act, so that some transactions of sale of immovable property like agreement of sale with possession for consideration, development agreements with possession etc., are covered under the definition of Section 2(47) of the Income Tax Act,1961, even though such transactions were not registered and title was not conveyed under section 54 of Transfer of Property Act. The clauses no. (v) of section 2(47) of the Income Tax Act, 1961 was inserted by the Finance Act, 1987 w.e.f. 01.04.1988, bringing into the ambit of word transfer, as "any transaction involving the allowing of possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882."*
>
> *Accordingly, in the case of part performance as referred above, registration of transfer document is not mandated to ascertain, protect and preserve the rights of the parties to the contract i.e., vendor and vendee, for transfer of immovable property, for a consideration. Thus the essentials of part performance U/s.53A of the Transfer of Property Act, are (i) there is a person who contracted to transfer for consideration of any immovable property, (ii) the contract is in writing and signed by the transferor or by his agent, (iii) from such contract the terms necessary to constitute the transfer can be ascertained with reasonable certainty, (iv) the transferee has taken possession of the property or any part thereon in part performance of the contract, (v) the transferee has performed or is willing to perform his part of the contract. If these conditions are embedded in the contract of sale by whatever name called, such transaction comes under clause no.(v) of section 2(47) of the Income Tax Act, 1961.*

Further, the new clause no. (vi) which was introduced into the definition of transfer U/s. 2(47) along with clause no.(v), was brought into for defining the word 'transfer' as "any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property." An explanation-1 to the clauses no. (v) and (vi), further indicate that, "for the purpose of sub clauses (v) and (vi), immovable property shall have the same meaning as in clause (d) of section 269UA."

20. It was submitted that the whole basis of giving a finding in favour of the assessee by the ld.CIT(A) is that a transfer within the meaning of Section 2(47)(v) has taken place pursuant to the execution of AGPA by the assessee in favour of IRMAC and therefore, the capital gain, if any, arose in the hands of the IRMAC and not in the hands of assessee. CIT-DR has also drawn our attention to Para 9.5.3 and 9.5.4 of the order passed by the ld.CIT(A). It was the contention of the ld.DR that the whole premises, on the basis of which, the ld.CIT(A) has decided the issue cannot be sustainable and is required to be set aside. The ld.CIT(A) has drawn our attention to the summary of the argument of the Assessing Officer captured by the ld.CIT(A) in the order which is available at para 9.1.1 which is to the following effect :

"9.1.1. While making the said addition and finalizing the assessment, the AO made following crucial observations, to arrive at the conclusion that the sale deeds vide document No.584/2007, dated 19-01-2007 in case of lands located at Shahjadi Begum village and document No.1088/2007, dated 20-01-2007 in case of lands at Jalapally village, are actually between M/s.KNRCL, the assessee and M/s.PBEL Real Estate India (P) Ltd., with M/s.ISIL, acting only as an agent, as such the capital gains on total sales consideration of Rs.60.00 crore, would arise in the hands of M/s-.KNRCL.

a) (i) There is no transference of land as far as the Agreement of Sale cum Irrevocable GPA entered by the assessee with M/s. IRMAC Services India Ltd., as further evidenced by the fact that only a notional stamp duty of Rs. 50,000/- was paid as applicable to GPA and not the full value of stamp duty of Rs. 5,40,06,750/-, as applicable to Sale Deeds, when actual transfer of lands take place and are registered with the State Govt. authorities i.e., Sub-Registrar Offices.

(ii) the ingredients of transfer as mentioned in the Transfer of Property Act and also as dealt with section 2(47) of the Income Tax Act, are not in effect complied with as far as AGPA between M/s. KNRCL and IRMAC Services India Limited.

b) IRMAC is an agent, accommodator, facilitator to the assessee in sale of land to PBEL and therefore Rs. 60 crores accrues to the assessee as principal.

c) No possession of the lands handed over by the assessee to IRMAC under AGPA.

d) Wrong interpretation about the date of registration of GPA no. 442/2007 and the date of registration of sale deed no. 584/2007.

e) The entire sale consideration as shown in the sale deeds is the income of KNR Constructions Ltd. and whatever happened subsequently is only application of income by IRMAC on behalf of KNR Constructions Ltd.

f) Wrong interpretation of name of KNRCL used as vendor in sale deeds. g) Both deeds were registered on the same day or within a gap of one hour to avoid the payment of tax on short term capital gains.

h) Enquiries with the Sub Registrars and statements recorded from them have also conclusively proved that the actual transfer of land took place only between M/s. KNR Constructions and M/s. PBEL Real Estate India Ltd.

i) The AGPA between the assessee and IRMAC is a colorable devices and sham transactions. M/s. KNR Constructions Ltd., represented by it's Executive Director Mr. M. Rajesh Reddy, was aware of the entire transactions and considerations involved and this is evidenced by the fact that it's Executive Director, (mentioned as Managing Director in the GPA and Sale Deeds) Mr. Rajesh Reddy, was present simultaneously along with Mr. E. Badirnath, Director of M/s. IRMAC Services India Ltd and Mr. Meir Boukris, Director of M/s. PBEL Real Estate India Pvt. Ltd. This fact was confirmed in the sworn statements U/s. 131 of the Income Tax Act, 1961, by both the Sub Registrars, in whose jurisdiction the registration took place and also by independent witnesses Mr. B. Vijay Kumar and Mr. B. Raghu Alekh, who signed as witness to the Agreement of Sale cum Irrevocable GPA and Sale Deeds.

k) In course of assessment proceedings, a letter has been filed by M/s. IRMAC Services India Ltd., wherein it has stated that the actual transaction took place between M/s. KNR Constructions Ltd. and M/s. PBEL Real Estate India Ltd., and possession was not handed over by M/s. KNR Constructions Ltd. to M/s. IRMAC Services India Ltd. It has also stated that it has been used for the purpose of accommodation by Mts. KNR Constructions Ltd. and further claimed that part of the amount withdrawn in cash has been handed back to M/s. KNR Constructions Ltd.

I) Even the Auditor of M/s. IRMAC Services India Ltd., i.e. Mr. K. Ramachandra Raju, in course of his sworn statement U/s. 131 of the Income Tax Act, 1961, recorded before Asst. Commissioner of Income Tax, Circle-2(1), Hyderabad, has stated that the eviction charges and ground levelling charges are mostly not genuine and that M/s. IRMAC Services India Ltd., has accommodated M/s. KNR Constructions Ltd has also refunded the balance amount to M/s. KNR Constructions Ltd. and others.

m) It is clear from the MOU that Mr. Meir Boukris, Director of M/s. PBEL Real Estate India Pvt. Ltd., the purchaser of the impugned lands, was aware that the lands belong to M/s. KNR Constructions Ltd., as mentioned in the MOU and the price of lands was stated at Rs. 2,70,00,000/- per acre, which is the amount, as mentioned in the Sale Deeds.

n) Nowhere in the Due Diligence report of S. Niranjan Reddy, Advocate, is the mention of M/s. IRMAC Services India Ltd. as the vendor. It is clear from the Due Diligence report that M/s. KNR Constructions Ltd. is the vendor and M/s. PBEL Real Estate India Pvt. Ltd., is the vendee. A copy of the Due Diligence report is enclosed as Annexure-14 with this Order.

o) Public notice by way of advertisements were released both in Eenadu and Deccan Chronicle newspapers dated 25.12.2006, by Mr. S. Niranjan Reddy, Advocate, on behalf of it's 'client' i.e. M/s. PBEL Real Estate India Pvt. Ltd., wherein it is clearly stated that the impugned lands belong to M/s. KNR Constructions Ltd. and the client is planning to enter into Sale Transaction with M/s. KNR Constructions Ltd. and to execute registered sale deeds with M/s. KNR Constructions Ltd. It is clear that the vendor is only M/s. KNR Constructions Ltd. and nowhere in the advertisements is there any whisper of M/s. IRMAC Services India Ltd.

p) As on the date of Agreement of Sale cum Irrevocable GPA, there were no sufficient funds in the bank account of M/s. IRMAC Services India Ltd., to pay M/s. KNR Constructions Ltd.

22. It was the contention of the ld.DR that the document executed by the assessee in favour of IRMAC was incomplete, and is not a sale document conferring the ownership or title of the property to it. It was submitted that the Assessing Officer in paragraph reproduced hereinbelow and more particularly, show cause notice that has brought on record that the possession of the property has been transferred by the assessee to IRMAC nor the sale consideration was received. Furthermore, it was submitted that before the registration of GPA, the possession of the property was already handedover by the assessee to the purchaser. It was further submitted that the negotiation was going on between the assessee and the purchaser PBEL which is evident by the due diligence report, newspaper advertisement and the other documents. It was submitted that these documents which are available at pages 141 to 145 and 152 to 174 of volume 1 clearly show that the assessee was selling the land @ Rs.2.70 crore per acre. It was submitted that the transaction shown by the assessee with IRMAC is a colourable device which has no purpose except to evade the taxes and therefore, the Assessing Officer was right in deciding the issue in favour of the assessee.

23. Per contra, the ld.AR has drawn our attention to the written submissions filed in this regard on 20.01.2007 and thereafter, and also to the fact that the transaction between IRMAC and PBEL, an independent transaction and therefore, the finding recorded by the Assessing Officer is without any basis. In the written submissions

filed on 24.07.2024 in against the revenue appeal, it was submitted as under :

16. It is respectfully submitted that in addition to the detailed written submissions already furnished on 20.7.2022 in the above said Appeal filed by the Deptt, and in continuation of the oral submissions made during the hearing, the assessee is submitting the following precise submissions to rebut the grounds of appeal of the Department and the arguments of the learned departmental representative on the issues of Agent and Principal, Registration of AGPA442/2007 and 584/2007 under Transfer of Property Act, Sections 17 and 49 Registration Act, issues on dates of presentation and registration of the AGPA and the sale deeds 1007/2007 and 1088/2007, etc.

16.1 The first contention of the assessee is that when the income under the head capital gain is to be computed, it has to be done in accordance with the provisions of Sections 45 to 55 of the I.T.Act. The computation of capital gain is to be done in accordance with the provisions of Sec.48 of the I.T.Act. Section 48 mentions that the "income chargeable under the head Capital Gain shall be computed by deducting from he full value of the consideration received or accrued as a result of the transfer of the capital asset "

16.2 In the case of the assessee the consideration either accrued or received is based on the registered document entered into by the assessee with IRMAC. In this case, such sale document is the Agreement of Salecum-General Power of Attorney. It is categorically mentioned in the document about the consideration paid by the purchaser to the vendor. Such an amount cannot be disturbed except under the provisions of Sec.50C of the I.T.Act or any other specific provision of the Act. The special provision of Sec.50C is not applicable to the facts of the assessee's case as the value received is in accordance with the registered document. Therefore, the provisions of Sec.50C have no application. The other provision provides for such adjustment the change is Sec.50D which is also not applicable to the facts of the assessee's case. There used to be one provision i.e. Sec.52 where the consideration is understated, the same could be changed or modified or enhanced. The said provision of Sec.52 has been deleted w.e.f. 1.4.1978 and is not re-introduced.

16.3 The Supreme Court in the following cases held that the consideration for transfer cannot be substituted for any other amount other than the amount as per the registered document.

a) K.P. Verghese Vs ITO reported on 131 ITR 597 (1981);

b) CIT Vs Shivakami Co (P) Ltd. reported in 159 ITR 71 (SC)

c) CIT Vs Gillanders Arbuthnot & Co. reported in 87 ITR 407(SC)

Copies of the said decisions are submitted. The Hon'ble Supreme Court held that the provisions u/s 52 are not valid. The entire section was withdrawn by the Legislature. Therefore, there is no intention for the Legislature to substitute any value for the sale consideration except when provisions of Sec.50C are applicable.

The assessee also relies on the following decisions:

a) The decision of the Hon'ble High Court of Delhi in the case of Arjun Malhotra Vs Commissioner of Income-Tax reported in 403 ITR 354;

16.4 In view of the above, for computation of capital gain, the Assessing Officer is bound to adopt the consideration mentioned in the document and not any other consideration. The appellant submits that in so far as the Agreement of Sale-cum-General Power of Attorney is concerned, it entered into with IRMAC and the said company in turn entered into the agreement with PBEL. The said transaction clearly indicate that the transfer is effected by the assessee in favour of IRMAC and the order passed by the CIT (A) is in accordance with the provisions of Sec.45 to 55 of the Act and the same cannot be disturbed. It cannot be disturbed because of the surmises which are proved to be wrong.

16.5 Without prejudice to the above, the assessee submits that if the transaction is relating to the business transaction, the provisions of Sec.40A(2) only have to be considered for determining the consideration. In the case of the assessee, the provisions of Sec.40A(2) are not applicable and even the Assessing Officer did not make any such attempt to prove that the said section is applicable. The assessee proved beyond any amount of doubt both before the Assessing Officer and the learned CIT (A) that the transferee is not in any way related to the assessee and Sec.40A(2) has no application.

16.6 Secondly, the transferee admitted the entire consideration is his final accounts and mentioned that the expenditure was incurred by him. All these facts clearly indicate that the provisions of Sec.40A(2) have no application. The assessee also submits that the issue of Benami nature is also not proved by the Assessing Officer as no part consideration was received back from the transferee. The Assessing Officer, therefore, found that the provisions of Sec.40A(2) have no application.

16.7 The assessee in its submissions filed on 20.7.22 submitted that IRMAC the transferee spent the entire consideration for its own purposes and no part is received by the assessee except to the extent of consideration admitted.

16.8 It is further submitted that a similar case came up before the Hon'ble ITAT i.e. the case of B.Vijay Kumar vs. ACIT. There also the property is the same almost abetting the land transferred by the assessee. The ultimate transferee is PBEL Real Estates (India) Pvt.Ltd., even in the said case.

16.9 The assessee, in the following paragraphs, is mentioning the details of the said case which is decided in favour of the assessee. Therefore, the issue is a covered issue.

(1) Covered Matter:

Our case is a covered matter with reference to the facts of the case of ***B.Vijaya Kumar Vs Asst. Commissioner of Income Tax , Circle 6(1), Hyderabad in ITA No. 721 / H/12 and 722 / H/12 before the Hon'ble I.T.A.T****, Hyderabad* ***"B" Bench****, the order copy of which was placed in Volume – 3 of Paper Book, pages 643 to 661. The brief facts of the case are that B.Vihaya kumar and his son B.Raghu Alekh have purchased 10.14 Acres of Agriculture land of Sahjadibegum villiage and Jalpalli villiages from Nimmala Srinivas and his relations for a total consideration of Rs.8.99 crores @ Rs.87.25 lakhs per acre. This purchase is by way of registered Agreement Of Sale Cum Irrevocable General Power Of Attorney with Possession (AGPA) No.377/2007 and 773/2007, both dated 18.01.2007.They sold the same lands to PBEL for a total consideration of Rs.27.94 crores @ Rs.2.70 crores vide sale deeds No. 583/2007 and 1087/2007 on 18.07.2007 but were registered on 24.01.2007. Thus the difference in purchase and sale consideration was Rs.18.95 crores. But Both the assesses declared a total income of Rs.80,50,000. and Rs.23,00,000, totaling to Rs.1,03,50,000/-. There was a survey operation u/s 133A on these assesses and assessments were completed under section 143(3).*

In the assessment proceedings both Vijay kumar and his son Raghu Alekh are taken as single unit and assessment was made in the name of Vijay Kumar and one assessment order was passed in his name. In the assessment proceedings the A.O put various questions and recorded statements of various persons and conducted enquiries. In these proceedings assessee Vijay Kumar given the following answers to the A.O:

a. *He and his son are only facilitators and have arranged the land admeasuring Ac.10.14 Guntas, to M/s PBEL Real estate India P.Ltd. Further, the assessee sated that they have incurred development expenditure and the payments were made through the banking channels.(Book 3, page 533, Para 4.4)*

b. *In an answer to the question of the AO on the sale and purchase of lands and making of profit of Rs.14.71 crores which was not reflected in the ROI and the reasons for not declaring profit, Vijay Kumar replied that he has transferred this amount for development work. (Book 3, Page 533 , Para 4.4, Question and answer to Q.11.1)*

c. *For the Question of the AO, that do you mean to say that there is no profit at all from these transactions, Vijay kumar answered that whatever profit earned out of this transaction has been informed to our C.A. asking him to duly reflect the sale in the ROI (Book 3, Page 534, Q. No.12)*

d. *Vijaya Kumar claimed that he and his son incurred Rs.16.00 Crores for executing development work and entered into development agreements with Chennai parties (Book 3, Page 535, Para 4.4)*

e. *When the A.O asked Vijay kumar to produce the parties for examination, Vijaya Kumar said that they are not available because after completion of development work he is not in touch with them.(Book 3 , page 536, above para no. 4.7)*

f. *Myself and my son purchased 10.14 acres lands through GPA and as we have no capacity to pay Rs.9.0 Crores to land owners we negotiated with PBEL and after setting deal with PBEL we got the properties transferred to our names and immediately on the same day we have presented the documents for transfer of the above lands to PBEL.(Book 3 Page 546 and 547, Q. 8)*

g. *With regard to the question on the declaration of profit on the purchase and sale of lands Vijay Kumar told that after meeting the development expenditure he got a gain of Rs.80,50,000/- and his son got again of Rs.23,00,000/- which was declared in their ROI.(book 3, Page 547, answer to Q.9)*

Apart from examination of Vijaya Kumar and his son , the AO also examined the Manager of PBEL and obtained answers to his questions which are given bellow.

h. *The lands were purchased to develop commercial venture as the main approach road to International Air Port is through these villiages. However the government has changed its intention to lay road through the above villiages and finally P.V Narsimharao Express Way was laid . (book 3, Page552, Q7, Q8)*

i. *For the question as to whom negotiated for the properties , he told that the properties were negotiated by Boukris , Director of PBEl (Book 3 ,Page 553, Q.9)*

j. *For question with whom the lands were negotiated, he said that they negotiated with Vijaya Kumar And Raghu Alekh (Book 3 Page 553, Q.10)*

k. *For the question that whether any negotiations were done with original land owners Nimmala Srinivas, Anjayya, Raghupathy, he told that No, we have negotiated with Vijaya Kumar And Raghu Aleh only, we donot know the original owners and we dealt with Vijaya kumar and Raghu Alekh. (Book 3, page 553, Q11)*

l. *For question that whether any middle men are involved in the above transactions, he said that with Vijaya Kumar and Raghu Alekh and no other middle men.(Book 3 , Page 553 Q.12)*

Finally the addition of difference amount of Rs.14.70 crores between the purchase price of lands paid to original owners under AGPA and sale price under sale deeds in favour of PBEL was added as short term capital gains in the hands of the assessee Vijay Kumar, rejecting the claim of development expenditure. When in appeal of the assesses before CIT Appals and Hon,ble ITAT, the addition in the hands of the AGPA holders was upheld and accordingly the appeal of the assesses on this addition was dismissed. (Book 3, Page 562 & 563, Para 5.1

(2) No relation of Principal and Agent between KNRCL and IRMAC:

The sale of agriculture lands by KNR Constructions Limited (KNRCL) under Agreement Of Sale Cum Irrevocable General Power of Attorney with Possession (AGPA) to IRMAC Services India Limited (IRMAC) is not a contract of agency but it is a transaction from principal to principal of transfer of capital asset under section 2 (47) (v) of the Income Tax Act and transaction of part performance under Sec.53A of Transfer of Property Act . As per the terms and conditions of the AGPA 442/2007 and 1007/2007 the land was sold for consideration and the consideration of Rs.13.89 crores was received from IRMAC and physical possession of land was delivered to IRMAC. It is important to see that in AGPA 442/2007 and 584/2007 KNRCL was written as VENDOR and IRMAC as VENDEE and sale consideration of 13.89 was paid by IRMAC to KNRCL as purchaser of lands on their own responsibility. There is no relationship between the both. The Supreme Court in the case of ***Gordon Woodroffe & Co. v. M.A. Majid & Co.*** *(AIR 1967 Supreme Court 181 (V 54 C 36)), held that "it is well established that even an agent can become a purchaser when an agent pays the price to the principal on his own responsibility". "It was also held that the agreement was one of vendor*

and purchaser and not one of principal and agent. Though the term 'agent' was used in the agreement, the court of appeal considered that the substance of the transaction was that the manufacturers sold their bricks to the so-called agent who in turn sold them on their own responsibility to customers".

Smt. D. Kasturi vs. CIT, High Court of Madras (2010) 323 ITR 40 (Mad)

It was held that, "For application of section 53A the relevant consideration would be the clauses in the agreement between the parties to the agreement and their performance in terms of the agreement. The subsequent act of the assessee of sale deeds executed by the power holder on the basis of power of attorney would not in any way alter the status of the parties to the agreement dated March 29,1993, for applicability of section 53A as has been rightly held by the learned single judge. The assessee could no longer assert possessory rights against the firm to which possession was already given pursuant to the agreement and that too after receiving the full sale consideration".

Bank ***of India v. K. Mohandas, Supreme Court, Civil appeal No. 1954 of 2009 (2009) 5 SCC***

It was held that "True construction of a contract must depend upon import of words used and not upon what the parties choose to say afterwards.

From the submission of this para along with judgments cited above IRMAK cannot claim that it is agent of principal KNR because IRMAC directly received Rs.60.00crores from PBEL and Paid only Rs.13.89 crores to KNRCL and KNRCL denied the receipt of any additional amount from IRMAC . Therefore in terms of 2 (47) (v) of the Income Tax Act the assessee KNRCL is accountable only for Rs.13.89 crores as net sale consideration as per the provisions of the Income Tax Act. Therefore KNRCL is not a principal to IRMAC and IRMAC is not an agent in respect of these sale transactions. This stand that IRMAC is not agent for KNRCL was also supported by the decision of this "A" bench in ***IT(SS)A no.62/Hyd/07*** *in the case of* ***Smt.R.Prbhavathi, Tirupati Vs. Asst. Commissioner Of Income Tax*** *, Central circle ,Tirupati, date of order 06.03.2009.*

The brief facts in the above case are, that one PV.Venkata Subbaiah of Tirupathi has sold 17 cents of land to Smt. R.Prabhavathi under simple General Power of Attorney in favour of her for aconsideration of Rs. 6,00,000/- and received the said consideration from Smt R.Prabhavathi. Later on the basis of this GPA she entered into a Joint venture agreement with one builder M/s Harini constructions, Tirupathi. She got 7 flats for her share and sold the flats for a total consideration of Rs.22,01,000/-. She has not declared the sale amount of 20.00 lakhs and the profit on these sale in her

returns of income. Subsequently a search operation took place in her house when the sale documents of flats found and consequently block assessment proceedings were come into play.

In the assessment proceedings she alleged that she acted only as an agent for PV.Subbaiah by means of GPA and she paid the entire sale proceeds to her principal Pv.Subbaiah and therefore the amount of sale consideration is to be assessed in the hands of PV.Subbaia only but not in her hands. The Assessing Officer examined PV.Subbaiah and he said that he has not received any amount from R.Prabhavathi over and above the amount of Rs.6.00 lakhs at the time of GPA. In his Cross examination by R.Prbhavathi also he denied the receipt of any additional amount from her. The A.O completed the assessment by adding the sale proceeds in the hands of R.Prabhavathi. CIT Appeal dismissed her appel and upheld the addition by the A.O. Then she is in appeal before this Hon'ble ITAT as per the details of the Appeal given above where in she put up the same argument of agent and principal before the "A" bench of ITAT.in result her appeal was dismissed and action of the AO making the addition was upheld. In its order the Hon'ble ITAT has made remarkable and important observations which are extracted here under.

> ***"****The contention of the assessee was that she was only GPA holder, and whatever was received from the developer and on sale of flats was passed on to the landowner, Venkatasubbaiah. When examined by the assessing officer and also cross-examined by the assessee in the course of assessment proceedings, the said land owner, affirmed before the assessing officer that all that he received form the assessee was only an amount of Rs.6,00,000, which was paid by the assessee to him before execution of power of attorney. It is based on this statement of the landowner and on account of assessee's failure to substantiate her claim if having passed on the sale proceeds received form purchasers of the flats and Rs.4, 99,845 form the developer, that the assessing officer completed the impugned assessment, treating the sale proceeds on sale of flats as the undisclosed income of the assessee herself.* ***The main question that arises for consideration is:- whose income is the sale proceeds received on the sale of seven flats, viz. whither the assessee or the landowner****. It is an undisputed fact that the sale proceeds in the first place have been received by the assessee. That being so, the question that clinches the issue is whether the assessee passed on those sale proceeds to the land owner as claimed by her.*
>
> *In the absence of any evidence brought on record by assessee either to substantiate her claim of having passed on the sale proceeds to landowner, or to contradict the statement of that landowner before the assessing officer denying receipt of any amount other than the amount*

of amount of Rs.6 lakhs, the assessing officer in our considered opinion was justified in treating the sale proceeds of Rs.22,01,000 as the undisclosed income of the assessee only. ***Though legal arguments have been advanced with regard to the ownership of the property and the status of the assessee only as an agent representing the land owner, who according to her is the principal based on the provisions of Indian contracts Act, those arguments are only of academic interest and are not relevant for the determination of the issue, whether the sale proceeds received by the assessee on sale of flats constitutes the undisclosed income of the assessee on the landowner since she has failed to substantiate her claim of having acted only as an agent and having passed on those proceeds to the landowner. It is also pertinent to note here that there is no stipulation whatsoever in the GPA, with regard to any commission to which the assessee, as an agent would be entitled and on the contrary, it is an undisputed fact on record that the assessee has paid an amount of Rs.6,00,000 to the landowner so as to secure the GPA in question in her favour****. Having offered and explanation with regard to the sale proceeds received by her to the assessing office it is for the assessee to substantiate the same and when evidence in the form of statement the landlord contradicting the stand of the assessee has been brought on received* ***It Is for the assessee to rebut the same by adducing any other evidence. Since the assessee has failed to discharge the onus that lay on her in that behalf we find no infirmity in the orders of lower authorities. We accordingly uphold the impugned orders of the lower authorities and reject the grounds of the assessee in this appeal.***

(3) Requirement of Registration of AGPA:

It is submitted that for assessment of capital gains, the requirement of registration of document of transfer of Immovable property under section 54 of Transfer of Property Act(T.P Act) was done away with by the ***Finance Act 1978*** *as a result of which other modes of transfer of capital asset were inserted in* ***Section 2 (47)*** *of Income Tax Act. The transaction of transfer under sub clause (v) of sec. 2(47) is one among them. Accordingly Part performance U/s 53A of TP Act, Agreement to sell etc have been brought into the ambit of transfer under this definition of capital asset under section 2(47), apart from sale under section 54 of T.P.Act. Therefore any transaction of allowing possession of immovable property for consideration like AGPA 442/2007 and 584/2007 is also regarded as transfer of capital asset. Therefore the requirement of registration of any document of transfer of immovable property including GPA under Transfer of Property Act (****T.P.Act****) by paying full stamp duty as applicable to sale deed under Registration Act*

is not a predicament for transfer of capital asset under Income Tax Act. Even then the AGPA 442/2007 and 584/2007 were registered documents. Therefore the issue of nonregistration of AGPA u/s 54 of T.P Act and no transfer of lands from KNR to IRMAC under AGPA does not arise. Therefore AGPAs 442/2007 and 584/2007 need not be registered under section 54 of the Transfer Of Property Act by paying stamp duty as per the provisions of section 17 & 19 of the Registration Act, by paying stamp duty as applicable to sale deed. Therefore the contention of the learned A.O as well as D.R, that the documents of AGPA 442/2007 and 584/2007 were not registered and therefore there is no transfer of capital asset ie, Agriculture land from KNRCL to IRMAK under AGPAs and only transfer took place when sale deeds were registered in favor PBEL will not stand in law. This legal proposition of no requirement of registration of transfer document of immovable property U/S 54 of T.P.Act is also upheld in the following judgments.

JASBIR SINGH SARKARIA [2007] 294 ITR 196 (AAR). *In advance ruling, in this case it was held that "transaction is identifiable by the terms of the agreement itself and it taken place within the framework of the agreement. What is contemplated by section 2(47)(v) is a transaction which has a direct and immediate bearing on allowing possession to be taken in part of performance of the contract of transfer. It is at that point of time that the deemed transfer takes place".*

CIT v. Podar Cement Pvt. Ltd. & Ors. (Supreme Court) (1997) 226 ITR 0625, *"it was held that, where property is handed over by contractor/builder to the purchaser, the purchaser would be treated as "owner' of that property irrespective of the fact that no registered document was executed under section 54 of Transfer of Property Act or Registration Act".*

Arif Akhatar Hussain V. ITO ITAT, Mumbai [2011) 037 (II) ITCL 0169

held *that"it is to be noted that the definition of transfer in the IT Act, is not similar to that of definition under the Transfer of Property Act (TP Act). Apart from various mode of transfers provided under the TP Act, the IT Act, also provides a definition of transfer as deemed transfer under section 2(47)(v). The deemed transfer is applied when the condition prescribed under section 53A of TP Act are fulfilled section 53A of the TP Act does not provide the condition for transfer but it provides protection to transferor of any immovable property by a written contract, the terms of which constitute the transfer and can be ascertained with reasonable certainty and the transferee as part performance of the contract taken the possessions of the property and has performed or willing to perform his part of contract, then even the said contract though required to be registered has not been registered and the transfer has not been completed in the manner prescribed therefore by law, the transferor is barred from enforcing against the transferee any right in respect of the*

property other than the right expressly provided by the terms of the contract. Under the Income Tax Act, 1961 by inserting clause (v) to section 2(47), the definition of term transfer includes the transaction which fulfils the conditions provided under section 53A of TP Act. Thus, the provisions of section 53A of TP Act does not provide any transfer but it talks about the situation when the right created in favour of the transferee cannot be defeated otherwise than the terms and conditions expressly provided in the contract itself. When the assessee has received the sale consideration and handed over the possession of the property in question vide development agreement then the condition prescribed under section 53A of the TP Act are satisfied and accordingly, as per the provisions of section 2(47)(v) of the IT Act the transaction of transfer is completed".

Madathil Brothers V. DCIT Madras High Court [2008] 301 ITR 345 (Mad) *held that "By referring to the decision of* ***Rajasthan High Court in CIT v. Vishnu Trading and Investment Co. [2003] 259 ITR 724*** *it was held that "for taxing capital gain registration of sale deed not necessary under the provisions of Income-tax Act".*

ACIT V. Akkineni Nagarjuna Rao, Hyd ITA No.534/Hyd/2004, Judgment by Smt. Asha Vijaya Raghavan ITAT, Hyd, Dated: 13th April 2012*. held that "Reliance is also placed on the decisions of* ***Smt Maya Shenoy V. ACIT (2009) 124 TTJ (Hyd) 692*** *and also Hon'ble Bombay High Court in the case of* ***Chaturbhuj Dwarakadas Kapadia V.CIT (260) ITR 491*** *wherein it has been held that S.2(47) (v) read with S.45 indicates that capital gains was taxable in the year in which such transactions were entered into even if the transfer of immovable property is not effective or complete under the general law. We also place reliance in this behalf on the ruling of Authority for Advance Ruling in* ***Jasbir Singh Sarkaria in Re (294 ITR 196 (AAR)****, to the following effect. In order to be 'transfer' within the meaning of cl. (v) of s. 2(47), there must be a transaction under which the possession of immovable property is allowed to be taken or allowed to be retained. The legislature advisedly referred to any transaction with a view to emphasize that it is not the factum of entering into agreement or formation of contract that maters, but is the distinct transaction that gives rise to the event of allowing the contractee to enter into possession that maters. That transaction is identifiable by the terms of the agreement itself and it takes place within the framework of the agreement"*

JANAK VOHRA vs. DELHI DEVELOPMENT AUTHORITY (2003 –DLT103-789)*, In this case it was held that "GPA, SPA and WILL, coupled with the agreement to sell creates interest in the property since the nature of these transactions are different from a mere agreement to sell.*

Assam Vegetables and Oil Products Ltd. v. CIT and Another (2003) 264 ITR 47 (Gauhati High Court). *The Hon'ble High Court held that "the agreement dated January 2, 1992, was admittedly a contract in writing*

executed by the transferor of the assessee signed by them for consideration and in pursuance of the agreement the assessee was placed in possession of the property. Hence, the ingredients requisite for application of section 53A were fully satisfied in the present case and therefore the property had been deemed to have been transferred to the assessee within the meaning of section 2(47) of the 1961 Act. Once the interest in the property was transferred to the assessee under the agreement, a further transfer of its interest in the property in favour of the Government would be transfer of capital asset and the profit earned on such transfer would be a short term capital gain of the assessee. The transfer effected in favour of the Government was under the direction issued by the assessee to the power of attorney holder. The income accrued from the said transaction would be the short term capital gain of the assessee".

Ratanlal Acharatlalshet V. Nanabhai Miyabahi Bombay High Court AIR, 1956 Bombay 175 (V 43, C 57 Mar) *held that**, "A party in whose favour an agreement of sale has been executed is entitled to have a marketable title made out for him".*

Asha M.Jain Vs. The Canara Bank And Ors. (Delhi High Court 94 (2001) DLT 841).

*Held that **"**By referring to the decision in **Shikha Properties (P) Limited vs. S. Bhagwant Singh and Ors**, it was held that, cases where agreement to sell is executed with Irrevocable power of attorney and full consideration having been paid would be covered by Section 202 of the Contract Act, since the purchasers deal with such properties practically as owners for fairly long and have "interest" in it. Thus in such a case agent has an interest in property which is the subject matter of the agency and which cannot be terminated to the prejudice of such interest in terms of Section 202 of the Contract Act, 1872.*

We have considered this aspect taking into consideration these judgments and we are in agreement with the view that the concept of power of attorney sales have been recognized as a mode of transaction. These transactions are different from mere agreement to sell since such transactions are accompanied with other documents including General Power of Attorney, Special Power of Attorney and Will and affidavits and full consideration is paid. Once the general power of attorney is registered for consideration there is no doubt that interest has been created in the property in favour of the purchaser and the provisions of section 53A of Transfer of Property Act would also come into play".

*In **ITO vs. B. Mahender Reddy (HUF) (2015),** it was held by the ITAT, Hyderabad 'B' Bench that, "there is a transfer of capital asset under Development Agreement Cum General Power of Attorney in favour of the developer as envisaged U/s. 2(47)(v), resulting in capital gain".*

*In **CIT vs. Ziauddin Ahmad (2015),** the Allahabad High Court held that, "as per the terms and conditions of the agreement dated 24.06.1999, the transfer was effective from that very day and not in the year of 2005 as wrongly observed by the AO. The capital gain was applicable in the year when the possession was handover by the assessee. In the present case, the assessee's all other rights except title stood transfer and therefore, the capital gain was to be computed on the basis of transfer and in the year of transfer as per the agreements".*

*In, **CIT vs. Mormasji Mancharji Vaid [2001] 250 ITR 542 (Guj.) (FB),** held that, "when the transfer document is executed and the property passes and merely because there is no registration deed the state coffers should not suffer. If the view is propounded that only on registration the act of transfer will be complete, then in that case, if the document is not registered, though the assessee will be enjoying the property, he will say that he is not liable to pay the tax. But that is not the intention of the Legislature. The word 'transfer' as indicated in the Income Tax Act is required to be considered and not 'sale' as indicated in the Transfer of Property Act. 'Transfer' as defined in the Act is to be given a simple meaning. Therefore, transfer of immovable property of the value exceeding Rs. 100 can be said to have been effected on the date of execution of the document".*

***(4) KNR is not responsible or accountable for Rs 46.11 crores** received by IRMAC and recorded in its books of account.*

It is submitted that IRMAC sold the lands purchased from KNRCL for Rs.13.89 Crores to PBEL for a consideration of Rs. 60.00 crores under sale deeds No.584/2007 and 1088/2007. The deference of Rs.46.11 crores should not be added in the hands of KNRCL because the sale deeds between IRMAC and PBEL are independent transactions from the transaction of AGPA between KNRCL and IRMAC and the question of IRMAC being agent for KNR does not arise as discussed in the above para. If really IRMAC is an agent for KNRCL, then the IRMAC should have transferred the entire sale consideration of Rs.60.00 crores received from PBEL to KNRCL as there is no condition in the AGPAs that IRMAC is entitled to any commission or brokerage for acting as an agent for KNRCL. That was not happened in this case. Therefore KNR is not Accountable for the balance sale consideration of 46.11 crores remained with the IRMAC.

(5). KNR is not responsible for Eviction charges and land leveling charges

From the notice U/s. 142(1) of the assessing officer ACIT, Circle 2(1), Hyderabad, to IRMAC dt.22.11.2010 and the reply given by the IRMAC on 16.12.2010 it was revealed that IRMAC spent Rs. 22.87 crores towards eviction charges and Rs. 21.56 crores to level the lands. In fact the eviction charges were withdrawn by the directors of IRMC as was stated by the

managers and other staff of the AXIS Bank IRMAC in their sworn statements before Assessing Officer and the land leveling charges were paid to the directors, shareholders and also companies and firms in which the directors and shareholders of IRMAC are directors and shareholders. IRMAC also said in their letter dt. 16.12.2010 that eviction charges passed on to KNRCL as per their advice and leveling work was allotted to the parties on the directions of KNRCL. These statements of IRMAC denied without any hesitation because KNRCL never given or issued any advices, instructions or other directions to IRMAC with regard to eviction charges and land leveling charges as alleged by IRMAC. As well KNRCL did not receive single paisa from IRMAC over and above Rs.13.89 Crores. IRMAC has to be put to the strict proof of the same. These are self-servicing statements of IRMAC without any corroborative evidence brought on record by IRMAC at any stage of assessment or appeal proceedings have no sanctity . Even in the course of survey on the assessee KNRCL no piece of evidence found by the department to prove that KNRCL received any single paisa over and above Rs.13.89 lakhs nor IRMAC produced any such evidence. Therefore IRMAC is only responsible for eviction charges and land leveling charges but not KNRCL.

(6). IRMAC Declared a profit of Rs. 1,68,07,750/- in their Profit and Loss Account

It is submitted that IRMAC in its Profit and Loss Account for the assessment year 2007-08 shown a profit of Rs. 1,68,07,750/- from the sale of lands to PBEL. This amount is arrived as follows.

Sale amount received from PBEL	=	*Rs. 60,00,75,000*
Less:- Amount paid to KNRCL	=	*Rs.(13,89,06,250)*
Eviction Charges	=	*Rs.(22,86,90,000)*
Land leveling charges	=	*Rs.(21,56,71,000)*
Balance profit		***Rs.1,68,07,750/-***

It is further submitted that the question of making profit as shown in the profit and loss account of IRMAC arise only when the subject lands were purchased on its own and sold on its own. If IRMAC really acted as an agent / facilitator/ accommodator they only get commission, brokerage or service charges but not profit. Therefore IRMAC dealt independent of KNRCL in these transactions of purchase and sale of lands and made profit on its own. Therefore IRMAC is not agent, accommodator, facilitator for KNRCL but only vendee of the subject lands as far as KNRCL is concerned. Therefore KNRCL should not be loaded with any amount over and above the amount of 13.89 crores because the eviction charges, land leveling charges were within IRMAC domain and profit on sale was retained with them.

(7). Dates of presentation and dates of registration of AGPA and Sale deeds

It is submitted that the department come up with an allegation that there are differences in dates of presentation of documents for registration and the dates of their registration on account of which they concluded that AGPAs are sham transactions. In this regard it is submitted that when a document was registered it relates back to the date of execution of the document. The GPA 442/2007 was presented for registration on 18.01.2007 between 11 to 12 hours and sale deed 584/2007 was presented for registration on 18.01.2007 between 3 to 4 hours. Thus one document was presented in SRO office in the morning and the other one was presented in the evening. The dates of registration of these documents is the internal matter of the Sub Registrar and the assessee KNR and for that matter even IRMAC or PBEL have no control over these things. Same is the case with the other documents. Therefore the allegation of sham transaction on the basis of dates of presenting documents for registration and dates of their registration is only a surmise and not valid in law and such allegation will not alter the nature, charter and validity of documents and cannot put the parties to the documents in another positions than the possession mentioned in the respective documents ie. seller and buyer and vendor and vendee.

(8). Abnormal deference in sale prices

It is submitted that the lands purchased by IRMAC from KNR for Rs.13.89 crores sold to PBEL for Rs. 60.00 crores on the same day. On seeing the assessment order of Vijay Kumar it was under stood that PBEL purchased the lands at abnormal price for the reason that they are in real estate business and they got information that a high way is going to be laid from the villages of Sahjadibegum and Jalpally connecting to International Air Port and they want to develop commercial ventures in these villages along with the proposed express way expecting much higher returns. As the land owners, Nimmala srinivas and others in the case of Vijaya kumar, and KNRCL in the case of IRMAC did not know about the proposed express way to International Air Port via Sahjadibegum and Jalpally villages they sold the lands under AGPA at Rs.13.89 crores only. This clarification on abnormal sale price paid by PBEL to Vijay Kumar was given by the Manger of PBEL to the assessing officer of Vijay Kumar which was already mentioned in the above para No.1, sub point ***"h".*** *Therefore any conclusion drawn on the issue of abnormal prices paid by PBEL to IRMAC to add Rs. 46.11 crores in the hands of knrcl is only a surmise and invalid.*

(9) AGPAs Are Sham/ Binami Transactions

"benami transaction" means,—

(A)a transaction or an arrangement—
(a)where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and
(b)the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,

The department did not prove the benami nature in the transaction entered into.

Briefly stated the appellant would like to bring to the kind notice of the Hon'ble ITAT its contention as under:

a) *The initiation of proceedings u/s 147 is not valid as the same was done because of difference of opinion which is emanated from the audit objection raised by the RAP and not accepted by the Department.*

b) *The land in question is situated in Jalpally Village of Saroornagar Mandal and Shahjade Begum village of Shamshabad Mandal.*

c) *It is an agricultural land which is proved beyond any amount of doubt as per the Revenue records and the certificate issued by Soil Testing Agency.*

d) *It is also supported by the decision of the Hon'ble ITAT for the later assessment years when the Hon'ble ITAT accepted that the agricultural income admitted is acceptable.*

e) *The assessee proved beyond doubt that agricultural operations were conducted and are being conducted on the part of the land remaining with the assessee unsold.*

f) *The land is not a capital asset within the meaning of Sec.2(14) of the I.T. Act in view of the decision of the Hon'ble ITAT in the case of Srinivasa Pandit (HUF) which was affirmed by the Hon'ble High Court of Andhra Pradesh.*

g) *It is also supported by the decision of the Hon'ble Karnataka High Court in the case of Commissioner of Income-Tax Vs Madhukumar N.(HUF) reported in (2012) 23 taxmann.com 341 (Kar.)*

24. We have heard the rival submissions and perused the material on record. Before we deal with the issue before us, it is essential to note down certain dates and events which are essential for determination of the present controversy.

S.No.	Date of purchase & Document No.	Person from whom purchased	Location of the land purchased	Extent of land purchased	Purchase consideration (Rs.)
1	03.05.2006 (Doc.6378/2006)	Mr. Mohd. Amjad	Sy. Nos. 3/A, 3/E, 4/1/A, 4/1/E, Shahzadibegum Village, Shamshabad Mandal, Ranga Reddy District	Ac. 4.27 Guntas	1,21,55,000/-
2	03.06.2006 (Doc.7456/2006)	Mr. Mohd. Mujeeb	Sy. No.4, Shahzadibegum Village, Shamshabad Mandal, Ranga Reddy District	Ac.1.13 Guntas	34,45,000/-
2	02.03.2006 (Doc. No.4450/2006)	Mr. Md. Ishaq	Sy.Nos.182, 182/3 and 183, Jalpally Village, Saroornagar Mandal, Ranga Reddy District	Ac.7.15 Guntas	1,91,75,000/-
3	13.04.2006 (Doc. No.8741/2006)	M/s.Super Metal Industries & Others	Sy. Nos.182, 182/3 and 183, Jalpally Village, Saroornagar Mandal, Ranga Reddy District	Ac.11.08 Guntas	2,91,20,000/-

Date of Document	Date of presentation before Sub-Registrar, Shamshabad (Document No.)	Person shown as Vendor	Person shown as Vendee	Consideration shown (Rs.) and Stamp Duty paid	Mode of payment as per Document
18.01.2007	20.01.2007 (Doc.No.442/ 2007)	M/s.KNR Constructions Ltd., represented byits Managing Director Sri M.Rajesh Reddy	M/s.Irmac Services India Ltd., represented by its Director Sri.E.Badrinath	3,75,00,000/- @ Rs.62,50,000/- per Acre for Ac.6.00 Guntas Stamp Duty - Rs.50,000/-	Ch. No.091338, dated 19.01.2007 drawn on UTI Bank, Jubilee Hills Branch, Hyderabad debited in Axis Bank Account of M/s.Irmac Services India Ltd. in favour of M/s.KNR Constructions on 22.01.2007. The said amount was credited in M/s.KNR Constructions Account No.64004602722 with State Bank of Mysore, Abids, Hyderabad on 22.01.2007)

Date of Document	*Date of presentation before Sub-Registrar, Champapet (Document No.)*	*Person shown as Vendor*	*Person shown as Vendee*	*Consideration shown (Rs.) and Stamp Duty paid*	*Mode of payment as per Document*
18.01.2007	*19.01.2007 (Doc. No.584/2007, P.12/2007)*	*M/s.KNR Constructions Ltd., represented by its Managing Director Sri M.Rajesh Reddy, represented by GPA Holder M/s.Irmac Services India Ltd., represented fly its Director Sri.E.Badrinath*	*M/s.PBEL Real Estate India Pvt. Ltd., represented by its Director Mr.Meir Boukris*	**16,20,00,000/- @** *Rs.2,70,00,000/- per Acre for Ac.6.00 Guntas* *Stamp Duty - Rs.1,45,79,900/-*	*DD No.176366, dated 18.01.2007 drawn on HDFC Bank, Lakadi-kapool Branch, Hyderabad (credited in the account of Misirmac Services India Ltd. at Axis Bank on 20.01.2007)*

Date of Document	*Date of presentation before Sub-Registrar, Champapet (Document No.)*	*Person shown as Vendor*	*Person shown as Vendee*	*Consideration shown (Rs.) and Stamp Duty paid*	*Mode of payment as* per *Document*
20.01.2007	*20.01.2007 (Doc. No.1007/2007,P-18/07)*	*M/s.KNR Constructions Ltd., represented by its Managing Director Sri M.Rajesh Reddy*	*M/s.Irmac Services India Ltd., represented by its Director Sri.E.Badrinath*	*10,14,06,250/- 6 Rs.62,50,000/- per Acre for Ac.16.09 Guntas* *Stamp Duty - Rs.50,000/-*	*Ch. No.091341, date 20.01.2007 drawn on UTI Bank, Jubilee Hills Branch, Hyderabad (debited in Axis Bank Account of M/sinnac Services India Ltd. in favour of M/s.KNR Constructions on 24.01.2007. The said amount was credited in M/s.KNR Constructions Account No.65005647472 with State Bank of Patiala, Nariman Point, Mumbai, dated 24.01.2007)*

Date of Document	*Date of presentation before Sub-Registrar, Champapet (Document No.)*	*Person shown as Vendor*	*Person shown as Vendee*	*Consideration shown (Rs.) and Stamp Duty paid*	*Mode of payment as per Document*
20.01.2007	*20.01.2007 (Doc. No.1088/ 2007)*	*M/s.KNR Constructions Ltd., represented by its Managing Director Sri M.Rajesh Reddy, represented by GPA Holder M/s.Irmac Services India Ltd., represented by its Director Sri.E.Badrinath*	*M/s.PBEL Real Estate India Pvt. Ltd., represented by its Director* Mr.Meir *Boukris*	*43,80,75,000/- @ Rs.2,70,00,000/- per Acre for Ac.16.09 Guntas Stamp Duty - Rs.3,94,26,850/-*	*Electronic* Transfer *of Funds through Account No.030010200010247 in UTI Bank, Jubilee Hills Branch, Hyderabad (credited through RTGS - HDFC 0000001 on 22.01.2007 in Axis Bank account of M/s.Irmac Services India Ltd.)*

25. The ld.DR has brought on record various facts for concluding that the transaction entered between KNR through Irmac was a sham transaction. For the above said purposes, it is essential to note it is essential to reproduce the finding of the Assessing Officer recorded by the Assessing Officer at paras 9 and 10 to the following effect :

> *"9. From the statement of Shri T. Ananth Ram, Sub-Registrar, Shamshabad, Ranga Reddy District, in whose jurisdiction lands sold at Shahzadibegum Village falls, the following important issues emanate :*
>
> *a) The actual seller is* ***M/s.KNR Constructions Co. Ltd., represented by GPA holder M/s.Irmac Services India Ltd., and the buyer is M/s.PBEL Real Estate India Pvt. Ltd****. (please refer to answer to Question No. 7 of the statement).*
>
> *b) The document No.584/2007 pertaining to Sale Deed between M/s.KNR Constructions Ltd., and M/s.PBEL Real Estate India Pvt. Ltd., relating to transfer of land to the extent of 4.27 acres in survey numbers 3/A, 3/E, 411/A, 4/1/1/E and 1.13 acres in survey numbers 4 of Shahzadibegum*

Village, Shamshabad Mandal, Ranga Reddy District, was ***admitted for registration on 19.01.2007 as pending number P.12/2007. (please refer to answer to Question No. 2 of the statement).***

*c) The document No.442/2007 pertaining to Agreement of Sale-cumIrrevocable General Po****wer of Attorney (GPA) between M/s.KNR Constructions Ltd., and M/s.Irmac Services India Ltd., relating to the aforesaid land, was admitted for Registration on 20.01.2007. (please refer to answer to Question No. 4 of the statement).***

d) As the Agreement of Sale cum Irrevocable GPA was admitted on 20.01.2007, between M/s.KNR Constructions Co. Ltd. represented by Mr.M.Rajesh Reddy, Director, and M/s.Irmac Services India Ltd., represented by Mr.E.Badrinath, after the admission of Sale Deed on 19.01.2007, ***the actual sale transaction would be regarded as only between M/s.KNR Constructions Co. Ltd. and M/s.PBEL Real Estate India Pvt. Ltd. as the Sale Deed was admitted on 19.01.2007, which is prior to the admission of AGPA****. (please refer to answer to Question No. 10 of the statement).*

e) The actual vendor is M/s.KNR Construction Co. Ltd. only and the actual buyer is M/s.PBEL Real Estate India Pvt. Ltd., in respect of the aforesaid lands to the extent of 4.27 acres in survey numbers 3/A, 3/E, 4/1/A, 4A/1/E and 1.13 acres in survey numbers 4 of Shahzadibegum Village, Shamshabad Mandal, Ranga Reddy District. (please refer to answer to Question No. 11 of the statement).

f) ***The extract of the thumb impression register relating to the above registration (enclosed with this letter), also clearly shows that the GPA was admitted only on 20.01.2007 subsequent to the Sale Deed which was admitted on 19.01.2007.***

e) Thus, the legal fiction treating M/s.Irmac Services India Ltd., as the vendor, is wiped out in this case due to the submission of the Sale Deed at the office of Sub-Registrar, Shamshabad on 19.01.2007, preceding the submission of GPA on 20.01.2007.

10. From the statement of Shii A. Vittal Goud, Sub-Registrar, Champapet, Ranga Reddy District, under whose jurisdiction the lands sold at Jalpally Village falls, the following important issues emanate :

a) The document No.1088/2007, dated 20.01.2007 pertaining to Sale Deed between M/s.KNR Constructions Ltd., and M/s.PBEL Real Estate India Pvt. Ltd., relating to transfer of land to ***the extent of 11.33 acres, in survey number 182 and 4.16 acres in survey number 183 of Jalpally*** *Village, Saroornagar Mandal, Ranga Reddy District and the document*

No.1007/2007, dated 20.01.2007 pertains to Agreement of Sale-cum-Irrevocable General Power of Attorney (GPA) between M/s.KNR Constructions Ltd., and M/s.Irmac Services India Ltd., relating to the aforesaid land, were submitted ***simultaneously for registration on the same day i.e. 20.01.2007 and same time and the thumb impressions were affixed in the Thumb Impression Register one after the another*** *(please refer to answers to Question Nos.2, 4 & 6 of the statement and also see the copy of the extract of Thumb Impression Register enclosed).*

b) The Agreement of Sale cum Irrevocable GPA (AGPA) is not a valid title to the land and the agreement holder does not have ownership rights. In all such cases, the maximum duty only Rs.50,000/- for registration of AGPA. As per the AGPA dated 20.01.2007 in respect of the aforesaid lands between M/s.KNR Constructions Company Ltd., represented by its Managing Director by Mr.M.Rajesh Reddy and M/s.Irmac Services India Ltd., represented by Mr.E.Badrinath, ***no ownership or title has passed on from M/s.KNR Constructions Ltd. to M/s.Irmac Services India Ltd. The actual ownership is only that of M/s.KNR Constructions Company Ltd. and the same was passed on to M/s.PBEL Real Estate India Pvt. Ltd. vide Sale Deed No.1088/2007, in respect of the aforesaid lands, after collecting the correct stamp duty thereon of Rs.3,94,26,850/-.*** *(please refer to answer to Question No.9 of the statement).*

n) The Title to the aforesaid said lands has only passed on between M/s.KNR Constructions Company Ltd. to M/s.PBEL Real Estate India Pvt. Ltd. (please refer to answer to Question No.13 of the statement).

o) The actual vendor is M/s.KNR Construction Co. Ltd. only and the actual buyer is M/s.PBEL Real Estate India Pvt. Ltd,, in respect of the aforesaid lands to the extent of 11.33 acres in survey number 182 and 4.1,6 acres in survey number 183 of Jalpally Village, Saroornagar Mandal, Ranga Reddy District. (please refer to answer to Question No.10 of the statement).

p) It is very clear from the aforesaid statement that Agreement to Sale cum Irrevocable GM is merely an authority to transact by the GPA holder on behalf of the actual owner of the land, but beyond that no ownership has in fact passed on from M/s.KNR Constructions Ltd. to M/s.Irmac Services India Ltd. On the other hand, the Sale Deed is crystal clear that M/s.KNR Constructions Ltd. is the vendor and M/s.PBEL Real Estate India Pvt. Ltd. is the vendee and this fact is only reaffirmed by the SubRegistrar, Champapet.

.1) The very fact that the Agreement of Sale cum Irrevocable GPA and the Sale Deed are dated 20.01.2007 and the Registration is also 20.01.2007, i.e. all done simultaneously, there is no way the physical possession of the land which is situated more than 20 K.M. away from the Sub-Registrar

Office, Champapet, could have been handed over by M/s.KNR Constructions Ltd. to M/s.Irmac Services India Ltd. and thereafter, to M/s.PBEL Real Estate India Pvt. Ltd. This fact again shows that the GPA with M/s.Irmac Services India Ltd. is a mere legal fiction/arrangement created to avoid payment of taxes due on the sale of lands.

26. Similarly, the Assessing Officer has also brought statements of officers of M/s on record. PBEL and in paras 12 and 13 of order it was recorded as under :-

12. From the statements of Mr. P.Surya Narayana Reddy, Shareholder and person closely associated with M/s.PBEL group of companies and Mr. G.Anand Reddy, Executive Director of M/s.PBEL Property Development India Pvt. Ltd., the following important issues emanate :

q) Though they are associated very closely with the group since February, 2007, and are incharge of Marketing, Finance and other issues relating to the companies under the PBEL group and also incharge of the development and marketing of lands of M/s.PBEL Group, including the lands purchased from M/s.KNR Constructions Ltd., they are not aware of either a company called M/s.Irmac Services India Ltd., and it's present / past Directors viz. Mr. K.Srinivas Chowdhary, Mr. E.Badrinath and Mr. K.V.Ratna Kumar.

r) Even otherwise, they are very much aware that the land was purchased from M/s.KNR Constructions Ltd. only and they have no figment of an idea as regards M/s.Irmac Services India Ltd.

s) Having been closely associated with the said lands purchased from M/s.KNR Constructions Ltd., it is improbable that they would not have been aware of M/s.Irmac Services India Ltd., had it been the real vendor.

t) Both of them have categorically stated that the lands purchases from M/s.KNR Constructions Ltd. are rocky lands, without irrigation facilities and have not been tilled. They also opined that since the surface is rocky, unless the rocks are removed, no agricultural activity is possible.

13. Your company, being a listed company, which is accountable to the investor public at large, you cannot claim ignorance of the transactions relating to sale of the aforesaid lands, especially given the peculiar circumstances mentioned above, and also the fact that per Acre, an amount of Rs.2. 70 crores per Acre is shown in the Sale Deed as against the amount of Rs.62.50 lakhs per Acre is shown in the Agreement of Sale cum Irrevocable GPA. This is all the more so, from the fact that the transactions of Registration have taken place at Shamshabad Sub-Registrar Office on 19.01.2007 and 20.01.2007 for the sale of lands at Shahzadibegum Village and at Champapet Sub-Registrar Office on 20.01.2007, relating to sale of lands at Jalpally Village. At both the Sub-Registrar Offices, your Managing Director was personally present and signed the necessary documents. This shows that he is very much aware that the actual transaction was only for Rs.2.70 crores per Acre and he cannot claim ignorance of the same

27. Similarly, the Assessing Officer in para 16 had recorded as under:-

16. From the above, it can be clearly seen that

a) With regard to lands at Jalpally Village, even though the date of Agreement of Sale cum Irrevocable GPA was 20.01.2007, M/s.KNR Constructions Ltd. received the amount only on 24.01.2007, after sirmac Services India Ltd., received the same on 22.01.2007. Thus, on the day of G A, neither M/s.KNR Constructions Ltd., in reality handed over the possession of the land to nor received any consideration from M/s.Irmac Services India Ltd., which proves beyond a pale of doubt that the GPA is only a legal fiction to avoid taxes due the government.

b) With regard to lands ot. Shahzadibegum Village, even though the date of Agreement of Sale cum Irrevocable GPA was 20.01.2007, M/s.KNR Constructions Ltd. received the amount only on 22.01.2007, after M/s.Irmac Services India Ltd., received the same on 20.01.2007. ***Moreover, the Sale Deed was submitted for registration on 19.01.2007 i****tself Thus, on the day of GPA, there is no question of M/s.KNR Constructions Ltd., handing over the possession of 'the land to M/s.Irmac Services India Ltd.,* ***given the fact that the possession of the land was handed over by M/s.KNR Constructions Ltd. on 19.01.2007 itself to M/s.PBEL Real*** **Estate** ***India Pvt. Ltd. and even otherwise it did not***

receive any consideration as on 20.01.2007 *from M/s.Irmac Services India Ltd. It is also strange to note that the consideration as per Sale Deed is through DD dated 18.01.2007, whereas the consideration as per GPA is through cheque dated 19.01.2007, even while the consideration of GPA should have preceded the consideration of a Sale Deed in the transaction of genuine GPA. This again proves beyond a pale of doubt that the GPA is only a legal fiction to avoid taxes due the government.*

c) It is also clear that, even if we have to presume that cheques have been given by M/s irmac Services India Ltd. on the day of GPA, the fact remains that as on date of cheques, the account ***of M/s.Irmac Services India Ltd. in Axis Bank, does not show any balance*** *and is in fact running on negative balance. Thus, it is clear that* ***M/s.KNR Constructions Ltd. was very much aware .that cheques would be received by M/s.Irmac Services India Ltd. from M/s.PBEL Real Estate India Pvt. Ltd****. This issue again strengthens the averment that M/s.KNR Constructions Ltd. has used the GPA with M/s.Irmac Services India Ltd., only as a legal fiction to avoid payment of taxes due to the government*

28. The Assessing Officer in para 18 has mentioned as under :

"18. Further, The Due Diligence Report and Legal Opinion fitrnished by Mr.S.Niranjan Reddy, on behalf of M/s.Niranjan Associates, Advocates to M/s.PBEL Real Estate India Pvt. Ltd., speaks of the ownership of lands in the aforesaid survey numbers, as belonging to M/s.KNR Constructions Ltd. only. There is no mention of M/s.Irmac Services India Ltd., in *the Due Diligence Report. Even the advertisement dated 25.12.2006 given by way of PUBLIC NOTICE by Mr.S.Niranjan Reddy, in respect of the aforesaid lands in Deccan Chronicle and Eenadu newspapers etc., indicate the ownership of land as that of M/s.ICNR Constructions Ltd. and the intention to purchase the same. Here again, there is no indication whatsoever of any ownership of land in respect of the aforesaid lands, by M/s.Irmac Services India Ltd., or anyone else. There is not even a whisper of the so called GPA. It is also clear from the report that Ws KNR Constructions Ltd has valid title over the lands, that there are no encumbrances or hindrances/ protected tenants etc, which will come in way of taking over vacant and peaceful possession by buyer i.e. M/s.PBEL Real Estate India Pvt. Ltd . It is very pertinent to note that there is no indication whatsoever of any kind of unauthorized occupations or hindrances which will restrict M/s.PBEL Real Estate India Pvt. Ltd from taking over peaceful and vacant possession from Ws KNR Constructions Ltd. Thus, not merely, the buyer i.e. M/s.PBEL Real Estate India Pvt. Ltd was clear about ownership of land by Ws KNR Constructions Ltd, even the legal opinion is clear on this issue. A copy of the notice in*

the newspaper dated 25.12.2006, is enclosed herewith for your kind perusal and if you wish, a copy of Due Diligence Report will be furnished to you.

29. Quiet contrary to the above said finding of facts by the Assessing Officer, the ld.CIT(A) has relied upon the Agreement of Sale cum Irrevocable General Power of Attorney (hereinafter referred as "AGPA") executed by document No.442/2007 and 1007/2007 by the assessee in favour of Irmac and it was recorded by the ld.CIT(A) that this transaction is transferred within the meaning of section 2(47)(v) and (vi) of the Act. It was wrongly concluded by him that AGPA neither required the registration under the Registration Act, 1908 nor payment of stamp duty under the Stamp Duty Act and it was concluded that by virtue of the AGPA, transfer within the meaning of Section 2(47) of the Act has taken place. We are afraid the above said finding of fact and law by the ld.CIT(A) is without any basis and is contrary to law.

30. It is brought on record that AGPA bearing No.442/2007 was submitted for registration only on 20.01.2007 whereas the document No.584/2007 i.e., sale deed between KNR and PBEL was submitted on 19.01.2007 as pending number P.12/2007. We fail to understand when the AGPA was not registered as on 19.01.2007 i.e., as it was registered only 20.01.2007 then how the possession was taken over by the Irmac from the assessee prior to registration of sale deed. Similarly, the Axis bank statement of Irmac which is part of the record clearly shows that no amount was received by the assessee upto 20.01.2007. Furthermore, the Irmac does not have the sufficient balance to pay the amount to the assessee. As mentioned

hereinabove, the agreement of sale entered between the assessee and PBEL which was signed on behalf of the PBEL by VI Infotech by Mr. Vijay shows the rate of 2.70 crore per acre. Further, corroborated by the statement of Vivek recorded by the Assessing Officer and also by his son. Both the names of Vijay and his son are appearing on the sale document executed in favour of PBEL. For the above said purposes, it is necessary to refer to the statements of Vijay which is enclosed with assessment order at page 195 to 200, more particularly, the reply to question no.10. The ld.CIT(A) had failed to appreciate that clause (v) of section 2(47) of the Act is not attracted to the facts of the case.

31. Section 2(47)(v) provides as under :

> *[(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A [25] of the Transfer of Property Act, 1882 (4 of 1882)*

32. Further, we may like to reproduce the finding of the Hon'ble Supreme Court in the case of Suraj Lamps Vs. State of Haryana, wherein it was held as under :

> *"6. In this background, we will examine the validity and legality of SA/GPA/WILL transactions. We have heard learned Mr. Gopal Subramanian, Amicus Curiae and noted the views of the Government of NCT of Delhi, Government of Haryana, Government of Punjab and Government of Uttar Pradesh who have filed their submissions in the form of affidavits.*
>
> *Relevant Legal Provisions*
>
> *7. Section 5 of the Transfer of Property Act, 1882 (`TP Act' for short) defines `transfer of property' as under:*

"5. Transfer of Property defined : In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself [or to himself] and one or more other living persons; and "to transfer property" is to perform such act." xxx xxx Section 54 of the TP Act defines `sales' thus:

"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 immoveable 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 immovable 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."

Section 53A of the TP Act defines `part performance' thus :

"Part Performance. - Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract :

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

8. We may next refer to the relevant provisions of the Indian Stamp Act, 1999 (Note : Stamp Laws may vary from state to state, though generally the provisions may be similar). Section 27 of the Indian Stamp Act, 1899 casts upon the party, liable to pay stamp duty, an obligation to set forth in the instrument all facts and circumstances which affect the chargeability of duty on that instrument. Article 23 prescribes stamp duty on `Conveyance'. In many States appropriate amendments have been made whereby agreements of sale acknowledging delivery of possession or power of Attorney authorizes the attorney to `sell any immovable property are charged with the same duty as leviable on conveyance.

9. Section 17 of the Registration Act, 1908 which makes a deed of conveyance compulsorily registrable. We extract below the relevant portions of section 17.

"Section 17 - Documents of which registration is compulsory- (1) The following documents shall be registered, namely:-- xxxxx

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.

xxxxx (1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

"16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance.

Transactions of the nature of `GPA sales' or `SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat

such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property.

They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

17. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not `transfers' or `sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale.

Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said `SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under section 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to `SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.

19. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such

development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding `SA/GPA/WILL transactions' are not intended to apply to such bonafide/genuine transactions.

33. From the reading of the judgment of the Hon'ble Supreme Court in the case of Suraj Lamps (supra), it is abundantly clear that there will be not transfer in the eyes of law in case, on the basis of the unregistered and unstamped documents as contemplated by the Registration Act, Stamp Act and Transfer of Property Act. The finding of the ld.CIT(A) whereby it was held in Para 9.5.3. that the registration of agreement for transfer of an immovable property is optional is contrary to law and the judgment of the Hon'ble Supreme Court in the case of Suraj Lamps (supra). In fact, the ld.CIT(A) had failed to take the cognizance of Section 17(1A) of the Registration Act, which provides as under :

Section 17(1A) - The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

33.1. From reading of section 17(1A) of the Registration Act, which requires registration of the document even for the purpose of Section 53A of the Act. However, the ld.CIT(A) had glossed over and has wrongly recorded that there is no need of registration for the

purpose of Section 53A of the Act. In fact, this finding of the ld.CIT(A) is contrary to law and the judgment of the Hon'ble Supreme Court.

34.1 Further, the ld.CIT(A) in para 9.5.3. has wrongly held as under :

> *"……Therefore, for the purpose of transfer of capital asset and for assessment of capital gains of an assessee, there is no difference between a registered document and unregistered document. What is needed is (i) a contract in writing of sale of immovable property for consideration between the parties, (ii) the transferee / vendee is allowed to take possession of the immovable property and (iii) the vendee / transferee is willing to perform his part of the contract i.e., willing to pay the consideration to the transferor. If these conditions can be ascertained from the contract between the parties then it can be said that there is transfer of capital asset under such document irrespective of the fact whether or not the document was registered under the general law i.e., Transfer of Property Act, 1882.*
>
> *Thus, by summing up the provisions of the clause no. (v) and (vi) of the section 2(47) of the Income Tax Act, 1961, defining the word transfer in relation to a capital asset and also section 269UA as referred in explanation - 1 to clause no. (v) and (vi) and also clause no. (iiia) of section 27 of the Income Tax Act, 1961, it can be legally concluded that, any transaction between the parties which has the effect of allowing the other person to take or retain the possession of an immovable property for consideration, is a transfer of capital asset within the definition of -Section 2(47) of the Income Tax Act, 1961 irrespective of the fact that, the registration of such transaction was done under the Transfer of Property Act, 1882 or the Registration Act, 1908. This is because of the fact that, the Amendment of 1987 had done away with the registration for transfer document for the purpose of transfer of capital asset U/s. 2(47) of the Income Tax Act, 1961."*

35. The above said finding of the ld.CIT(A) is based on incorrect understanding of law and facts. As discussed hereinabove, there cannot be transfer on the basis of GPA unless, it is registered

after paying the stamp duty as contemplated for transfer of immovable property. Further, the finding of the ld.CIT(A) is contrary to the decision of the Hon'ble Supreme Court wherein it was held that the Income Tax Act cannot be read in violation or exclusion of other law. In the case of M/s. Apex Laboratory Pvt. Ltd. Vs. DCIT dated 22.-02.2022 in SPECIAL LEAVE PETITION (CIVIL) NO. 23207 OF 2019 wherein it was held as under :

> *"27. It is also a settled principle of law that no court will lend its aid to a party that roots its cause of action in an immoral or illegal act (ex dolo malo non oritur action) meaning that none should be allowed to profit from any wrongdoing coupled with the fact that statutory regimes should be coherent and not self- defeating. Doctors and pharmacists being complementary and supplementary to each other in the medical profession, a comprehensive view must be adopted to regulate their conduct in view of the contemporary statutory regimes and regulations. Therefore, denial of the tax benefit cannot be construed as penalizing the assessee pharmaceutical company. Only its participation in what is plainly an action prohibited by law, precludes the assessee from claiming it as a deductible expenditure.*
>
> *30. Thus, one arm of the law cannot be utilised to defeat the other arm of law – doing so would be opposed to public policy and bring the law into ridicule.29 In Maddi Venkataraman & Co. (P) Ltd. v. CIT30, a fine imposed on the assessee under the Foreign Exchange Regulation Act, 1947 was sought to be deducted as a business expenditure. This Court held:*
>
> *"Moreover, it will be against public policy to allow the benefit of deduction under one statute, of any expenditure incurred in violation of the provisions of another statute or any penalty imposed under another statute. In the instant case, if the deductions claimed are allowed, the penal provisions of FERA will become meaningless".*
> *(emphasis supplied)*
>
> *32. Before us, Apex has continually stressed on the need to divorce interpretation of tax provisions from a perceived immorality / violation of public policy. Apex repeatedly relied on T.A. Quereshi (supra), M/s K.M. Jain (supra) and CIT v. Pt. Vishwanath Sharma31. We find that none of these judgments find Biharilal Jaiswal v. CIT, (1996) 1 SCC 443. (1998) 2 SCC 95. I.T.R. No. 27 of 1999, Allahabad HC, dated*

21.02.2008. much favour with the case of the appellant. T.A. Quereshi addressed a business 'loss', not a business 'expenditure' as envisioned under Section 37(1). In M/s K.M. Jain, the ransom money paid to kidnappers of the employee of the assessee company was allowed deduction primarily based on the fact that the assessee was helpless and coerced to pay the amount in order to save its employee's life. Thus, the assessee was not a wilful participant in commission of an offence or activity prohibited by law. The same is not applicable to the present facts. Pharmaceutical companies have misused a legislative gap to actively perpetuate the commission of an offence. In Pt. Vishwanath Sharma, a Division Bench of the Allahabad High Court was faced with the question of whether payment of commission to government doctors could be exempted under Section 37(1). At the time, there was no statutory provision prohibiting doctors engaged in private practice from accepting such commission. Hence, the High Court held that while the Assessing Officer had correctly allowed such deduction for private doctors, the same could not be allowed for Government doctors:

*"In the present case, payment of commission to Government Doctors cannot be placed on the same pedestal. A distinction has already been made by the authorities while allowing deduction to the assessee in respect to commission which the assessee has paid to private doctors since in their case, payment of commission cannot be said to be an offence under any statute but in respect to Government doctors such payment could not have been allowed as it is an offence under the Statutes as stated above." *** "We are, therefore, clearly of the opinion that payment as commission to Government doctors for obtaining a favour therefrom by prescribing medicines in which the assessee was dealing cannot be said to be a "business expenditure" and no deduction can be allowed thereof under the Act." (emphasis supplied) The 2002 Regulations, applicable to all medical practitioners (including doctors in private practice), was introduced w.e.f. 14.12.2009.*

4. Interpretation of law has two essential purposes: one is to clarify to the people governed by it, the meaning of the letter of the law; the other is to shed light and give shape to the intent of the law maker. And, in this process the courts' responsibility lies in discerning the social purpose which the specific provision subserves. Thus, the cold letter of the law is not an abstract exercise in semantics which practitioners are wont to indulge in. So viewed the law has birthed various ideas such as implied conditions, unspelt but entirely logical and reasonable obligations, implied limitations etc. The process of continuing evolution, refinement and assimilation of these concepts into binding norms (within the body of law as is understood and enforced) injects vitality and dynamism to statutory provisions. Without this dynamism and

contextualisation, laws become irrelevant and stale. 1994 Supp (2) SCC 296. Tomne v. Eispzer, 245 U.S. 418 (1918).

36. Further, the finding of the ld.CIT(A) in para 9.6 of his order is wrong and contrary to the bare reading of G.O.Ms. No.1475 dated 30.07.2005. In para 9.6, it was wrongly held as under :

"9.6 As far as the comments on payment of stamp duty of Rs.50,000/- while registering the AGPA as against Rs.5,40,06,750/- on Registration of Sale deed, it may be relevant to observe that, the AGPAs no.442/2007 and 1007/2007 were registered with the concerned Sub Registrars by paying a stamp duty of Rs. 50,000/-, as per notification no.II to G.O.Ms no. 1475, dated 30.07.2005 of Revenue Department of Govt. of Andhra Pradesh, wherein the rate of stamp duty payable for the agreements of sale or construction / development of immovable properties, combined with General Power of Attorney was at 1% of the sale consideration or estimated cost of construction or cost of development as declared by the parties in the document subject to a maximum of Rs.50,000/-. Since, AGPA documents are considered as Agreement of Sale coupled with Irrevocable General Power of Attorney with delivery of possession for consideration, there appears no anomaly in procedure followed, as such could not be interpreted adversely."

37. The G.O.Ms.No.1475 is required to be read in the light of the decision of the Hon'ble Supreme Court in the case of Suraj Lamps (supra), wherein the hon'ble Supreme Court has held that there cannot be transfer in violation of the provisions of the Registration Act and Transfer of Property Act. Furthermore, the G.O. relied upon by the ld.CIT(A) is as under :

"In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (Central Act II of 1899), the Governor of Andhra Pradesh hereby reduces the Stamp Duty payable under Article 6(B) of Schedule I-A of the Indian Stamp Act, 1899 in respect of documents relating to Agreements or Memoranda of Agreements of sale or

construction/ development of immovable properties combined with General Power of Attorney clause to 1% on the sale consideration or estimated cost of construction/development, as declared by the parties in the document, subject to a maximum of Rs.50,000/- on the condition that the stamp duty so paid shall not be adjustable ***at the time of registration of consequent sale deeds in pursuance of such Agreements-cum-General Power of Attorney registered under the Registration Act, 1908."***

38. From the reading of G.O.Ms.No.1475 dt.30.07.2005, the ld.CIT(A) failed to appreciate the rationale behind the notification. The bare reading of the G.O. make it abundantly clear that no transfer of immovable property took place on account of the agreement of sale of immovable property combined with the GPA. On the contrary, the GO clarifies that the Stamp Duty at Rs.50,000/- was paid at the time of agreement of sale cum GPA shall not be adjustable at the time of registration of the consequent sale deed pursuant to the agreement of sale cum GPA. Thus, the G.O. itself recognizes the requirement of execution of the sale deed and registration thereof.

39. Further, on facts, we found that the agreement of sale cum GPA is neither transfer of title nor ownership of the property. In fact, if we accept that the transfer of land u/s 53A has taken place then the title documents are required to be registered after paying the stamp duty as held by the Hon'ble Supreme Court in the light of Section 17(1A) of the Registration Act in the case of Suraj Lamps (supra) and therefore, the Sub-Registrar, has fairly submitted that the agreement of sale cum GPA is not a sale document and does not confer either the ownership on the title in favour of Irmac. Furthermore, if the possession coupled with transfer of title has taken place, then the document was required to be registered as a transfer document nor

as a GPA. The Assessing Officer in the recorded statement on 08.12.2010 and on 09.12.2010 of the Sub-Registrars, who have registered the documents, and their statements are referred hereinbelow.

40. Though, the assessee had cross-examined these two witnesses and have sought to clarify that AGPA is a transaction of part performance under Section 53A of the Transfer of Property Act. Unfortunately, the above said statement of the Sub-Registrar recorded on 08.12.2010 and 09.12.2010 remain unchallenged and no questions were asked regarding the same. In our view, the Sub-Registrar cannot express their view on the aspect whether the transaction is on account of part performance of the agreement or not. As mentioned hereinabove even for the fulfilment of the condition under Section 53A, it is necessary that the agreement should bear the adequate Stamp Duty and should be registered in accordance with law.

41. The requirement of law for treating the agreement for transfer has not fulfilled 1. As neither there was transfer of land, 2. Nor the transfer of consideration at or before the registration. It has already come on record that the Irmac was not having sufficient funds in its Axis bank account for making payment to the assessee at the time or before the registration of agreement cum GPA. It has further come on record in the statement of Sub-Registrar, that there was no transfer of ownership or title from the assessee to Irmac. In the duly sworn statement, the Sub-Registrar namely, Shri T. Ananth Ram has stated before the Assessing Officer as under :

1. Please state the date of submission of Document No.584/2007 in Sub Registrar Office, Shamshabad ?

A. The document No.584/2007 pertains to Sale Deed between M/s.KNR Constructions Ltd., and M/s.PBEL Real Estate India Pvt. Ltd., relating to transfer of land to the extent of 4.27 acres in survey numbers 3/A, 3/ E, /A, 4/1/1/E and 1.13 acres in survey numbers 4 of Shahzadibegum Village, Shamshabad Mandal, Ranga Reddy District. The same was submitted on 19.01.2007 as pending number P.12/2007.

4. Please state the date of submission of Doctjment No.442/2007 in Sub Registrar Office, Shamshabad ?

A. The document No.442/2007 pertains to Agreement of Sale-cumIrrevocable General Power of Attorney (GPA) between M/s.KNR Constructions Ltd., and M/s.Irmac Services India Ltd., relating to the aforesaid land. The same was submitted on 20.01.2007.

7. Who is the actual buyer and seller in the aforesaid transactions ?

A. The actual seller is M/s.KNR Constructions Co. Ltd., represented by GPA holder M/s.Irmac Services India Ltd., and the buyer is M/s.PBEL Real Estate India Pvt. Ltd.

8. How could the Sale Deed vide ***Document No.584/2007 (signed by Mr.E.Badrinath, Director M/s.Irmac Services India' Ltd., representing M/s.KNR Constructions Co. Ltd. in favour of M/s.PBEL Real Estate India Pvt. Ltd.) be accepted on 19.01.2007, even though the Agreement to Sale cum Irrecoverable GPA vide Document No.442/2007 (M/s.KNR Constructions Co. Ltd. represented by Mr.M.Rajesh Reddy, Director, in favour of M/s.Irmac Services India Ltd., represented by Mr.E.Badrinath, Director) was submitted only thereafter, i.e. on 20.01.2007*** *? Who is the actual transferor/vendor and who is the actual transferee / vendee with respect to the aforesaid lands ? Please clarify.*

A. In the above circumstances, the actual sale transaction would be regarded as only between M/s.KNR Constructions Co. Ltd. and M/s:PBEL Real Estate India Pvt. Ltd. Thus, the transferor / vendyr of the aforesaid lands is M/s.KNR Constructions Co. Ltd. and the transferee/vendee is M/s.PBEL Real Estate India Pvt. Ltd.

9. *The consideration of the impugned land shown in Agreement of Sale cum Irrevocable GPA dated 18.01.2007, entered between M/s. KNR Constructions Co. Ltd. represented by Mr.M.Rajesh Reddy, Director, and M/s.Irmac Services India Ltd., represented by Mr.E.Badrinath, Director, is Rs.3,75,00,000/-*

Rs.62,50,000/- per acre, for the total land admeasuring 6 'acres. On the other hand, the consideration shown in sale deed dated 18.01.2007 in respect of the very same land, entered between Mr.E.Badrinath, Director M/s.Irmac Services India Ltd., representing M/s.KNR Constructions Co. Ltd. and M/s.PBEL Real Estate India Pvt. Ltd., is shown as Rs.16,20,00,000/- Q Rs.2,70,00,000/- per acre, for the total land admeasuring 6 Acres. If the agreement of sale cum Irrevocable GPA is to be taken as valid and the ownership is to be treated as that of M/s.Irmac Services India Ltd., then there is an obvious undervaluation of stamp duty on consideration of Rs.12,45,00,000/- (Rs.16,20,00,000 (-) Rs.3,75,00,000). This issue may please be clarified.

A. As the Agreement of Sale cum Irrevocable GPA admitted on 20.01.2007, between M/s.KNR Constructions Co. Ltd. represented by Mr.M.Rajesh Reddy, Director, and M/s.Irmac Services India Ltd., represented by Mr.E.Badrinath, after the admission of Sale Deed on 19.01.2007, the actual sale transaction would be regarded as only between M/s.KNR Constructions Co. Ltd. and M/s.PBEL Real Eitate India Pvt. Ltd. as the Sale Deed was admitted on 19.01.2007, which is prior to the admission of AGPA.

11. For the purposes of record, in view of clear anomalies as above, it may be clarified as to who is the actual vendor i.e. whether M/ s.KNR Constructions Co. Ltd. or M/s.Irmac Services India Ltd., even though the sale deed shows M/s. KNR Construction Co. Ltd. as the vendor, represented by M/s.Irmac Services India Ltd.,. the GPA holder. In other words, it appears that there was no transfer of land or tile / ownership, as ,far as the Agreement of Sale cum Irrevocable GPA is concerned and the actual ownership vests only with M/s.KNR Constructions Co. Ltd. and the same has been transferred to M/s.PBEL Real Estate India Pvt. Ltd. This issue also may please be clarified.

A. As mentioned above, the actual vendor is M/s.KNR Construction Co. Ltd. only and the actual buyer is M/s.PBEL Real Estate India Pvt. Ltd., in respect of the aforesaid lands to the extent of 4.27 acres in survey numbers 3/A, 3/ E, 4/1/A, 4/1/1/E and 1.13 acres in survey numbers 4 of Shahzadibegum Village, Shamshabad Mandal, Ranga Reddy District.

42. Similarly, the Sub-Registrar, A. Vittal Goud in his statement dt.09.12.2010 has stated to questions 9 to 11 as under :

> *"9. The consideration of the impugned land shown in Agreement of Sale cum Irrevocable GPA dated 20.01.2007, entered between M/s.KNR Constructions Co. Ltd. represented by Mr.M.Rajesh Reddy, Director, and M/s.Irmac Services India Ltd., represented by Mr.E.Badrinath, Director, is Rs.10,14,06,250/- @ Rs.62,50,000/- per acre, for the total land admeasuring Ac.16.09 Guntas in survey numbers 182 and 183, Jalpally*

Village, Saroornagar Mandal, Ranga Reddy District.: On the other hand, the consideration shown in sale deed dated 20.01.2007 in respect of the very same land, entered between Mr.E.Badrinath, Director M/s.Irmac Services India Ltd., representing M/s.KNR Constructions Co. Ltd. and M/s.PBEL Real Estate India Pvt. Ltd., is shown as Rs.43,80,75,000/- Q Rs.2,70,00,000/-per acre, for the total land admeasuring Ac.16.09 Guntas in the aforesaid survey numbers. If the agreement of sale cum Irrevocable GPA is to be taken as valid and the ownership is to be treated as that of M/s.Irmac Services India Ltd., then there is an obvious undervaluation of stamp duty on consideration of Rs.33,66,68,750/- (Rs.43,80,75,000 (-) Rs.10,14,06,250). This issue may please be clarified.

A. The Agreement of Sale cum Irrevocable GPA (AGPA) is not a valid title to the land and the agreement holder does not have ownership rights. In all such cases, the maximum duty only Rs.50,000/- for registration of AGPA. As per the AGPA dated 20.01.2007 in respect of the aforesaid lands between M/s.KNR Constructions Company Ltd., represented by its Managing Director by Mr.M.Rajesh Reddy and M/s.Irmac Services India Ltd., represented by Mr.E.Badrinath, ***no ownership or tile has passed on from M/s.KNR Constructions Ltd. to M/s.Irmac Services India Ltd. Therefore, there is no question of undervaluation of stamp duty and the duty pertaining to 'AGPA was collected of Rs.50,000/- , w****hich is the maximum prescribed. The actual ownership is only that of M/s.KNR Constructions Company Ltd. and the same was passed on to M/s.PBEL Real Estate India Pvt. Ltd. vide Sale Deed No.1088/2007, in respect of the aforesaid lands, after collecting the correct stamp duty thereon of Rs.3,94,26,850/-.*

10. It may again be specifically clarified as to who is the actual vendor i.e. whether M/s.KNR Constructions Co. Ltd. or M/s.Irmac Services India Ltd., even though the sale deed shows M/s. KNR Construction Co. Ltd. as the vendor, represented by M/s.Irmac Serviced India Ltd., the GPA holder. In other words, it appears that there was no transfer of land or tile / ownership, as far as the Agreement of Sale cum Irrevocable. GPA is concerned and the actual ownership vests only with M/s.KNR Constructions Co. Ltd. and the same has been transferred to M/s.PBEL Real Estate India Pvt. Ltd.

A. As mentioned above, the actual vendor is M/s.KNR Construction Co. Ltd. only and the actual buyer is M/s.PBEL Real Estate India Pvt. Ltd., in respect of the aforesaid lands to the extent of 11.33 acres in survey number 182 and 4.16 acres in survey number 183 of Jalpally Village, Saroornagar Mandal, Ranga Reddy District.

11. You are requested to submit the extracts of all relevant registers and records in connection with the aforesaid sale transaction, including those

showing signatures and thumb impressions of all the parties concerned, including those representing M/s.KNR Constructions Co. Ltd., M/s. Irmac Services India Ltd., M/s.PBEL Real Estate India Pvt. Ltd., witnesses etc.

A. Relevant Extract of the Thumb Impression Register is submitted herewith duly certified by me. The original produced before you is being taken back by me after submitting the certified copy. In page numbers 10 & 11 of the aforesaid register, the Thumb Impressions of the concerned persons have been affixed, pertaining to Doc. No.1007/2007 (of pending Doc. No.P-18/07 regularized on 23.01.2007) between M/s.KNR Constructions Company Ltd., represented by Mr. M.Rajesh Reddy and M/s.Irmac Services India Ltd., represented by Mr. E.Badrinath and Doc. No.1088/2007 (of pending Doc. No.P-19/07 regularized on 24.01.2007) between Mr. E.Badrinath, representing as AGPA holder of M/s.KNR Constructions Ltd. and Mr. Meir Boukris, Director of M/s.PBEL Real Estate India Pvt. Ltd."

43. Though, the ld.AR in the written submission dt.21.07.2022 has submitted that the cross examination has been carried out by the assessee in the remand proceeding before the ld.CIT(A). However, nothing has been brought on record to contradict the statement given by the Sub-Registrar on 08.10.2010 or 09.10.2010. Further, we are also of the opinion that the title and ownership of Irmac is required to be perfected by paying the entire sale consideration before the execution of the sale deed in favour of PBEL and registration of consequent sale deed in its favour by the assessee coupled with payment of stamp duty on the entire sale consideration followed with transfer of possession. In our view, there is no transfer of land within the meaning of Section 53A of the Transfer of Property Act read with Section 2(47)(v) of the Income Tax Act.

44. Unfortunately, the ld.CIT(A) instead of relying upon the decision of hon'ble Supreme Court in the case of Suraj Lamps (supra) had wrongly relied upon the decision of Hon'ble Supreme Court in the case of CIT Vs. Podar Cement 226 ITR 625 without appreciating the context under which the observation of the Hon'ble Supreme Court was made. The finding of the Hon'ble Supreme Court in the case of Podar Cement (supra) is not relevant for the purpose of deciding the issue under Section 2(47)(v) of the Act. The finding of the hon'ble Supreme Court given in the case of Podar Cement (supra) was totally unconnected and unrelated to the issue and therefore, the same is not binding for deciding the issue in question. In the said judgment, it was held as under :

".....From the circumstances narrated above and from the Memorandum explaining the Finance Bill, 1987 (supra), it is crystal clear that the amend-ment was intended to supply an obvious omission ***or to clear up doubts as to the meaning of the word "owner" in Section 22 of the Act.*** *We do not think that in the light of the clear exposition of the position of a declara- tory/clarificatory Act it is necessary to multiply the authorities on this point. We have, therefore, no hesitation to hold that the amendment introduced by the Finance* ***Bill, 1988 was declaratory/clarificatory in nature so far as it relates to Section 27(iii), (iiia) and (iiib).*** *Consequently, these provisions are retrospective in operation. If so, the view taken by the High Courts of Patna, Rajasthan, and Calcutta, as noticed above, gets added support and consequently the contrary view taken by the Delhi, Bombay and Andhra Pradesh High Courts is not good law.*

We are conscious of the settled position that under the common law owner means a person who has not valid title legally conveyed to him after complying with the requirements of law such as Transfer of Property Act, Registration Act etc. But in the context of section 22 of the Income-tax Act having regard to the ground realities and further having regard to the object of the

Income-tax Act, namely, *'to tax the income', we are of the view, owner' is a person who is entitled to receive income from the property in his own right."*

45. The decision of the Hon'ble Supreme Court in the case of Podar Cement (supra) was rendered in the context of Section 22 and not in the context of Section 2(47)(v) of the Act. Hence, the ratio laid down in the case of Podar Cement (supra) is not applicable to the facts of the present case and therefore, the same is required to be dismissed.

46. The ld.CIT(A) in para 9.7 of his order has dealt with the issue of possession and has mentioned that the possession as per the GPA was handedover by the assessee to Irmac. Further, in para 9.9 it was recorded that the AGPA No.442/2007 submitted on 20.01.2007 will relate back the date when the document was executed. In the present case, the sale deed bearing no.584/2007 was presented for registration on 19.01.2007 whereas the GPA was presented for registration on 20.01.2007. Hence, there is no question of having the possession of the property with Irmac pursuant to GPA on 19.01.2007 as the GPA itself came into existence only on 20.01.2007. There is no question of relating back of the GPA to an act done 19.01.2007. In our view, once the GPA itself came into existence only on 20.01.2007 and therefore, before its execution there cannot be transfer of possession of the property by the assessee to Irmac as the possession of the property has already been handed over to PBEL, there was no occasion for handing over the possession by the assessee to

Irmac. In view of the above, the answer given by the Sub-Registrar in response to question nos.8 to 10 and 9 to 11 (supra) clearly show that transaction happened between the assessee and PBEL and therefore, the finding of the ld.CIT(A) is without any basis and contrary to facts and law.

47. The ld.CIT(A) had also referred to the letter dated 16.12.2010 written by K.V. Rathan Kumar of Irmac wherein it was mentioned by him at page 4 wherein he has submitted that no possession of land was taken from the assessee by the Irmac. However, quiet contrary to this, ld.CIT(A) had rejected this letter on the basis of the observation of the Assessing Officer made in the case of Irmac wherein there was a reference of incurring the expenditure on account of levelling the land or blast the boulders on the land.

48. In our view, the finding given by the ld.CIT(A) in para 9.7.1. cannot be sustained being incorrect and preposterous for various reasons including the following reasons :

1) In letter dt.16.12.2010 it was confirmed by the Director that no possession was taken by the company.
2) The GPA in respect to Shahjadibegum Village was executed on 20.01.2007 and the sale deed was executed by KNR through Irmac on 19.01.2007. As per the GPa, the possession was handed over on 20.01.2007.
3) Once the sale of land precedes the execution of GPA. There is no question of coming into possession of the

land or carrying out any activities for levelling of land or removing the boulders.

4) In respect to both the lands at Shahajadibegum and Jallapalli Village, the possession was given to PBEL and therefore, there was no time available with Irmac to carry out any activities at the premises either by levelling of land or by removing the boulders.

5) Further, during the site inspection on 04.03.2010, the Assessing Officer has brought on record that the land was vacant with rocks scattered and full of boulders. The assessee has carried out the cross examination of the Village Revenue Officer, the said VRO in his reexamination done by the Assessing Officer in response to question no.12 has held as under :

> *Q.12 I am showing you the proceeding dated 04/03/2010. Please describe the contents of it ?*
>
> *Ans. In presence of me as VRO, it is observed that land is not tilled and not used for agricultural purpose as on date. Rocky terrain of land, there is rocks spread on land, big boulder rolling, prima facie show that no agriculture operation are carried out in past 2-3 years. No irrigation facilities are found to be available to the land.*

6) No commission was given by the assessee to Irmac before the execution of sale deed to enter into possession of the property and carrying out any activity of levelling of land or removing boulders.

49. Similarly, in para 9.8 of his order, the ld.CIT(A) has mentioned that the sale consideration of Rs.60 crore was not received by KNRCL and was received in the bank account maintained by Irmac. Admittedly, the amount of Rs.3.75 crore was credited in the account of the assessee only on 22.01.2007 and Rs.10,14,06,250/- was deposited in the bank account of the assessee on 24.01.2007. After recording the above said, it was held by the ld.CIT(A) that no consideration was received by the assessee. In our view, the finding of the ld.CIT(A) is incorrect for the reasons stated hereinabove and we are of the opinion that the assessee had deliberately structured the transaction in such a manner, which gives the colour of transfer by Irmac instead of the assessee. Admittedly, the sale of land at Shahjadibegum village happened prior to execution of GPA on 19.01.2007 and similarly, the sale of land at Jalapalli Village happened on 20.01.2007 i.e., on the very same date of execution of GPA. It has already come on record that Shri Rajesh Reddy was present at the time of registration of both the sale deeds and the GPA and it is clear from the register of Thumb Impression / Signature produced by the Sub-Registrar before the Assessing Officer which are available at pages 187 and 193 of paper book, volume 1. Quite contrary to the case of the assessee, even Mr. Bhadrinath in his cross - examination which is available at page 09 has stated in response to question no.5 as under :

Q.5 : Please give the details of investments made by the company for the past 6 years ?

Ans: I do not have any idea about the assets or investments of the company. I know only about one investment by the company in the land purchased from KNR Constructions at Jalapally (12 acres) at Shamshabad (6 acres) for a consideration of about 13 crores in 2007. Mr. Ratan Kumar asked me to go the Registrar Office and sign the documents as a representative of the company. ***I do not know any details except for signing the document as a representative. Within a month the entire lands were sold to PBEL for a consideration of about 25 crores (approximately)****. I signed the sale deed as a representative of the company on the advice of Ratan Kumar.*

50. In the cross examination of Mr. E. Bhadrinath done by the assessee on 09.02.2010, nothing has been brought on record to disturb the finding of the Assessing Officer whereby it was held that the transaction was between the assessee and PBEL and further, it has not been proved that the company has taken possession of the property and it has come on record that the company has sold the property for Rs.25 crores. Whereas, as per the consideration mentioned in the sale deed, it is more than Rs.60 crores. Furthermore, we also found that the statement of the witnesses to the GPA as well as the sale of land were recorded and the name and signature of the witnesses are available at the back page of 98 and 109 which clearly show that the same witnesses were present at the time of registration of GPA as well as the Sale Deed. Both the witnesses namely, Vijay, Kumar and DMS Prasad has confirmed that the sale was made by the assessee to PBEL. Lastly, in the statement of the officers' of PBEL, it has come on record that the PBEL has purchased the property

admeasuring 23 acres for Rs.60 crore from KNR. In reply to question no.10 by the Director of the purchaser at page 205 and 215, it was mentioned as under :

> *Q.10 Are you aware of M/s. KNR Constructions Ltd ?*
>
> *Ans. I have a limited knowledge to the extent that I know M/s. PBEL Real Estate Pvt. Ltd has purchased a property admeasuring about 23 acres for Rs.60 crores from M/s. KNR Constructions Ltd., situated at Jalpally village, Saroornagar Mandal and Shahzadibegum Village, Shamshabad Mandal, Ranga Reddy District. But I am not associated with the purchase of the aforesaid lands.*

51. In view of the categorical statements recorded by the Assessing Officer of the Director of the buyer, the letter of the Irmac, witnesses to the GPA as well as the sale deed, witnesses from the Revenue Department, Sub-Registrar, we are of the opinion that assessee sold the land of 23 acres for Rs.60 crores to PBEL and the Irmac was only an entity which was created just to reduce the tax liability of the assessee. In view of the above, all the grounds of Revenue appeal are allowed and the order of the Assessing Officer is restored.

52. The ld.CIT(A) while adjudicating the appeal of assessee had a given a finding that the assessee was not the beneficiary of Rs.46,11,68,750/- on the basis of the assessment order passed in the case of Irmac. In our view, since we have held that the assessee was the real beneficiary of the transfer of land, and therefore, the money is required to be taxed in the hands of the

assessee. Furthermore, it is the case of the assessee that the said Irmac has claimed eviction charges for Rs.22,66,90,000/- and earth levelling and boulders for Rs.21,56,71,000/- (at page 224 of the assessment order). In this regard, as held by us, that the said Irmac was not having the possession of the property, even for a day, and therefore, there was no occasion for it to incur any charges for eviction or for earth levelling and removing boulders. The justification of the assessee is contrary to commonsense and unimaginable as to how a person can incur the expenditure for eviction before it is coming into possession of the property. As held by us, the GPA in favour of Irmac was of subsequent date than the transfer of land with respect to Shahjadibegum village is concerned and similarly, on 20.01.2007 itself, the possession was given by the assessee to PBEL which is also the date of execution of GPA by assessee in favour of Irmac. In both the cases, there was no time available to incur any expenditure either by eviction or levelling and removing the boulders. Furthermore, the revenue has already brought on record that the person who has alleged to have been in possession was not traceable and a report to that effect is already available on record. Furthermore, there is no reference of any possession either in the purchase document of the assessee or land revenue document. Lastly, the letter of Irmac dated 16.12.2010 and the statement of the buyer clearly show that the land was sold by the assessee to PBEL. In the light of the above, the finding of the ld.CIT(A) on this aspect is required to be reversed and the order of the Assessing Officer is restored. In the order of the ld.CIT(A) passed on 05.03.2024, it

has been brought to our notice, that the appeal of Irmac has been dismissed and the addition made in the hands of Irmac were sustained on protective basis by holding as under :

> *"In ground no. 2 the assessee objects to making addition of Rs. 44,61,25,000 under protective basis on the ground that the appellant was only an accommodator. It is pertinent to note that assessment u/s 147 was completed ex parte in this case due to non-cooperation of the appellant. The AO has passed a speaking order to prove that Eviction charges and Development charges were not properly explained and hence bogus. Therefore, the balance amount of Rs. 44.44 crores was rightly added on protective basis in the hands of the appellant as the said amount was already added in the hands of M/s KNR constructions substantively. The amount of Rs. 21.56 crores was also added protectively in the hands of the appellant as no confirmation was submitted by the sub-contractors to prove its genuineness. The ground no. 2 is dismissed."*

53. In view of the above reason also, we reverse the order passed by the ld.CIT(A) in the appeal of the assessee. Thus, the appeal of Revenue is allowed in toto.

54. Ground nos.6 to 8, 10 and additional ground nos.1 and 2 of assessee's appeal are taken care of while deciding the Revenue's appeal. In view of the finding given by us in the appeal of Revenue, these grounds are dismissed.

55. To sum up, the appeal of the Revenue is allowed, and the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 27th August, 2024.

Sd/-	**Sd/-**
(G. MANJUNATHA) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 27th August, 2024.
TYNM/SPS

Copy to:

S.No	Addresses
1	M/s. KNR Constructions, 3rd and 4th Floor, KNR House Plot No.114, Phase – I, Kavuri Hills, Hyderabad – 500 033.
2	The Deputy Commissioner of Income Tax, Central Circle – 2(1), Hyderabad.
3	PCIT (Central Circle), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order