

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH**

**BEFORE**

**SHRI LALIET KUMAR, JUDICIAL MEMBER  
AND  
SHRI BALAKRISHNAN. S, ACCOUNTANT MEMBER**

|   |     |  |
|---|-----|--|
| ITA No.87/VIZ/2024  |     |  |
| Assessment Year: 2017-18  |     |  |
|   |     |  |
| Venkataram Spinning Mills<br>Private Limited,<br>Guntur.<br><br>PAN : AAFCV2151H. | Vs. | The Income Tax Officer,<br>Ward – 2(1),<br>Guntur. |
| (Appellant)   |     | (Respondent)                                       |
| Assessee by:  |     | Shri GVN Hari, AR.                                 |
| Revenue by:   |     | Shri Ld.DR. Satyasai Rath, CIT-<br>DR.             |
|   |     |  |
| Date of hearing:  |     | 20.01.2025   |
| Date of pronouncement:  |     | 04.02.2025   |

**ORDER**

**PER LALIET KUMAR, J.M.**

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 11.01.2024 for the A.Y. 2017-18.

2. The brief facts of the case are that assessee is a private limited company engaged in the spinning mill business. During the financial year 2016-17 (AY 2017-18), the assessee sold 8.81 acres of agricultural land located at Unguturu Village for ₹4,00,00,000 as per registered document no. 1158/2017 dated 01.03.2017. However, the assessee did not file its return of income for AY 2017-18. Subsequently, a notice under Section 148 was issued on 30.03.2021, followed by notices under Section 142(1), calling for financial details and property-related documents. In response, the assessee submitted that the land was initially purchased to construct a spinning mill but was later sold due to non-materialization of the project and claimed that the land was agricultural and not a capital asset. However, the Assessing Officer observed that the land was situated within the jurisdiction of the Andhra Pradesh Capital Region Development Authority (APCRDA), qualifying it as a "capital asset" under Section 2(47) of the Income Tax Act. Further, the assessee failed to provide adequate evidence to prove the agricultural nature of the land or agricultural activities conducted on it. Hence, Assessing Officer treated the sale consideration of ₹4,00,00,000/- as long-term capital gains. Thereafter, Assessing Officer worked out the capital gain of Rs.3,86,05,538/- after allowing cost acquisition at Rs.13,94,462/- u/s 45 of the Act and added to the total income. Accordingly, Assessing Officer completed the assessment u/s 147 r.w.s. 144 of the Act assessing the total income at Rs.3,86,05,538/- and passed assessment order on 29.03.2022.

3. Before us, Id.AR has drawn our attention to para 6 of the assessment order, which is to the following effect :

*“6. In response to the show cause notice, the assessee replied that the agricultural lands are situated in CRDA and these lands are not situated in the acquired lands limit and if identified under CRDA, it cannot be treated as capital asset under section 2(47) of the I.T.Act. He further submitted that agricultural land which are transferred by the assessee will not under purview of section 2(47) of the I.T.Act and there is no transfer of capital asset more while saying that the land are under CRDA and these lands are not taken by the AP Sate Govt. Hence, long term capital gains will not attract in the assessee's case.”*

3.1. Thereafter, Id.AR has drawn our attention to para 7 of the order of LD.CIT(A), which is to the following effect :

*“7. **Ground no.1 to 3, 5 & 7** are relating to taxing of Long Term Capital Gain from sale of land which was claimed to be agricultural land by the appoint All these grounds are relating to same issue and as they are Interconnected, they are being as these grounds are The appellant has not filed any details during appellate proceedings and hence this order is passed on the basis of information filed by.164) Appellant before the Ac the AO. The AO In para 5 & 6 on page 3 of the assessment order has given a clear finding that the appellant has not produced any documentary evidence in support of the claims that the land transferred during the impugned AY was an agricultural land and appellant carried any agricultural activities on the said land. Hence, the AO concluded that the transfer of the land was covered by section 45 of the Act and accordingly, the AO brought to tax the LTCG after allowing the indexed cost of acquisition. As no details about the land being an agricultural land were either produced before the AO or during the appellate proceedings and hence, the decision of the AO to tax the transaction in question as transfer of the capital asset is upheld. According the LTCG brought to tax of Rs.3,86,05,538/- is sustained. Ground no.1 to 3, 5 & 7 are dismissed.*

3.2. The ld.AR submitted that the A.P. Capital Region Development Authority (APCRDA) is not a municipality within the meaning of law and as per Section 2(47) of the Act. The ld.AR relied upon the decision of co-ordinate Bench of the Tribunal in the case of Smt. T. Urmila Vs. ITO in ITA No.398/Hyd/2012 dt.12.12.2012 and referred to paras 59 to 65, 70 to 72 and 79 and 80 of the said order. In addition to the above, ld.AR has also submitted that the Assessing Officer and LD.CIT(A) has not accepted the fact that the assessee was carrying out agricultural activities and it was recorded by the lower authorities that the assessee was not carrying out any agricultural activities. Quiet contrary to it, it was wrongly recorded by the lower authorities that the assessee was not carrying out agricultural activities. The ld.AR also submitted that the character of the land is exempt from taxation, being outside the definition of 'capital asset'. The ld.AR further drawn our attention to G.O.Ms.No.207 dt.22.09.2015 issued by the Government of Andhra Pradesh by which Andhra Pradesh Capital Region Development Authority (APCRDA) Act, 2014 was enacted. It was submitted that Capital Region comprises of Krishna District and Guntur District.

4. On the other hand, the Ld.DR referred to para 7 of LD.CIT(A) and supported the orders of the lower authorities. Ld.DR relied upon the definition of capital gain u/s 2(14)(iii) of the Act. It was submitted that 'capital region' is similar to municipality / township / cantonment area "or by any other name" include the capital region also.

5. We have heard the rival submissions and perused the material on record. Section 2(14)(iii) (a) and (b) of the Act provides as under :

**Section 2(14) in The Income Tax Act, 1961**

*(14)"capital asset" means—*

*(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."*

6. In the present case, the case of the Assessing Officer is that the land of the assessee is situated in APCRDA. However, the Assessing Officer was of the opinion that this is the land situated in APCRDA and therefore, the land is required to be treated as capital asset and not an agricultural land and therefore, it is within the purview of Section 2(47) of the Act.

7. We have reproduced hereinabove the definition of 'agricultural land' in the preceding paragraphs. From the perusal of the definition of 'agricultural land', it is clear that if any area is comprised within the jurisdiction of a municipality or a cantonment board that has a population of not less than ten thousand, then that land would not be considered as 'agricultural land'. The only question raised by the Assessing Officer and the Ld.CIT(A) was whether the land which is the subject matter of the appeal, though falling under APCRDA but not falling within any municipality or cantonment board limits, would still be considered a 'capital asset' or not. The Ld.DR has sought to include the phrase "or by any other name" from the definition, which would include

APCRDA. Therefore, if the land is situated within the limits of APCRDA, there is no requirement that it should be outside the purview of the municipal limits. In our understanding, the arguments of the Ld.CIT-DR would result in inconsistency. If we include the term “Capital Region” within the scope of municipality, then the municipality will be larger in size than that of the Capital Region. On the contrary, if we look at the APCRDA Notification No.22.09.2015, whereby various mandals, villages, and towns, etc were included in APCRDA. The said Notification at page 3 and 6 pertains to Guntur District mentioned as under :

#### APPENDIX

(To G.O.Ms.No.207, MA&UD (M2) Dept., Dt: 22.09.2015)

I. The Mandals and Villages / Town / Municipality **included** in APCRDA Area :

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| Sl.No. | Mandal | Town / Municipality | Extent Area in Hectares | Area in Sq. K. |
|--------|--------|---------------------|-------------------------|----------------|
|        |        |                     |                         |                |

**(b) GUNTUR DISTRICT**

|   |               |           |                    |                |               |
|---|---------------|-----------|--------------------|----------------|---------------|
| 1 | Atchampeta    | 1         | Madipadu Agraharam | 218.02         | 2.18          |
|   |               | 2         | Madipadu Seri      | 632.15         | 6.32          |
|   |               | 3         | Ginjurpalle        | 437.46         | 4.37          |
|   |               | 4         | challagariga       | 288.29         | 2.88          |
|   |               | 5         | Taduvoy            | 421.31         | 4.21          |
|   |               | 6         | Konduru            | 1030.73        | 10.31         |
|   |               |           |                    | <b>3027.96</b> | <b>30.28</b>  |
| 2 | Krosuru       | 1         | Dodleru            | 2382.38        | 23.82         |
|   |               | 2         | Hassanbada         | 747.45         | 7.47          |
|   |               | 3         | Garikapadu         | 569.39         | 5.69          |
|   |               | 4         | Gudipadu           | 1827.96        | 18.28         |
|   |               | 5         | Thalluru           | 1084.96        | 10.85         |
|   |               |           |                    | <b>6612.14</b> | <b>66.12</b>  |
| 3 | Sattenapalli  | 1         | Dhulipalla         | 2007.64        | 20.08         |
|   |               | 2         | Bhurugubanda       | 2051.35        | 20.51         |
|   |               |           |                    | <b>4058.99</b> | <b>40.59</b>  |
| 4 | Phirangipuram | 1         | Gundlapadu         | 378.78         | 3.79          |
|   |               | 2         | Ponugupadu         | 1824.32        | 18.24         |
|   |               | 3         | Merakapudi         | 727.32         | 7.27          |
|   |               |           |                    | <b>2930.42</b> | <b>29.30</b>  |
| 5 | Edlapadu      | 1         | Sandepudi          | 362.19         | 3.62          |
|   |               | 2         | Thurlapadu         | 1022.23        | 10.22         |
|   |               |           |                    | <b>1384.42</b> | <b>13.84</b>  |
| 6 | Prathipadu    | 1         | Vangipuram         | 1917.80        | 19.18         |
|   |               |           |                    | <b>1917.80</b> | <b>19.18</b>  |
| 7 | Ponnuru       | 1         | Vallabharaopalem   | 1715.86        | 17.16         |
|   |               | 2         | Nandur             | 1186.54        | 11.87         |
|   |               | 3         | Mulukuduru         | 1095.89        | 10.96         |
|   |               |           |                    | <b>3998.29</b> | <b>39.98</b>  |
| 8 | Bhattiprolu   | 1         | Surepalle          | 455.67         | 4.56          |
|   |               | 2         | Konetipuram        | 516.78         | 5.17          |
|   |               | 3         | Pallekona          | 855.5          | 8.56          |
|   |               | 4         | Gorigapudi         | 498.67         | 4.99          |
|   |               | 5         | Pedapulivarru      | 1562.49        | 15.62         |
|   |               | 6         | Pesarlanka         | 451.22         | 4.51          |
|   |               | 7         | Pedalanka          | 405.09         | 4.05          |
|   |               | 8         | Oleru              | 1378.36        | 13.78         |
|   |               |           |                    | 6123.78        | 61.24         |
|   | <b>Total</b>  | <b>30</b> |                    | <b>30053</b>   | <b>300.53</b> |

8. From the perusal of the above, it is clear that as many as 30 towns / municipalities of the Guntur District were included in APCRDA area. The inclusion of municipalities in the APCRDA area of Guntur Municipality or Dhulipalla clearly shows that municipality is different than APCRDA capital region. The legislature has not included the capital region within the municipality limit rather the legislature has provided contrary to it i.e., including the municipality area within the capital region.

9. Furthermore, if we look into the definition of 'agricultural land' which provided as under :

*(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*

It is clear that after the "jurisdiction of municipality" it is mentioned *(whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name)* . Thus, the legislature has included various forms of municipal bodies like municipal corporations, notified area committees, town area committees, town committees, or any other name within the realm of municipality. The phrase used in the (after the open bracket of the municipality i.e., "or by any other

name" was used by the legislature to include such other bodies or authorities which are discharging the similar functions / duties as that of municipalities / town area committees, as has been notified under Article 243P of the Constitution of India.

10. The Constitution of India in Article 243P defines the committee, district and municipality and municipal area as under :

**243P. Definitions.—In this Part, unless the context otherwise requires,—**

- (a) "Committee" means a Committee constituted under article 243S;
- (b) "district" means a district in a State;
- (c) "Metropolitan area" means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;
- (d) "Municipal area" means the territorial area of a Municipality as is notified by the Governor;
- (e) "Municipality" means an institution of self-government constituted under article 243Q;
- (f) "Panchayat" means a Panchayat constituted under article 243B;
- (g) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

10.1 The 'municipal area' means the territorial area of a municipality as notified by the Governor. In the present case, the power has been exercised by the Governor of the State of Andhra Pradesh not under Section 243P to declare a particular area as a municipal area, but rather, the Governor has exercised its power under sub-section (2) of Section 3 of APCRDA, and has notified certain areas as forming part of APCRDA. In our view, the scope

and ambit of Article 243P is quite different from the scope and ambit of sub-section (2) of Section 3 of APCRDA. Both operate in different fields, and therefore, even if the area has been notified by the Governor by exercising power under sub-section (2) of Section 3 of APCRDA, it would not make the area (the subject matter of the land) part of the territorial area of any municipality. Furthermore, the Notification itself has included various municipalities, towns, and areas as mentioned above.

11. The legislature has clearly provided for any agricultural land to be a capital asset should fall within the territorial jurisdiction of any municipality as under the Scheme of Constitution of India as notified under Article 243P by the Governor of the State. In the present case, the land in question as per the case of the Assessing Officer do not fall within the jurisdiction of any municipality and was only forming part of the capital region. As mentioned hereinabove, merely because the land falls within the capital region will not make an otherwise agricultural land (not falling in any municipality) as a capital asset merely because it is forming the part of APCRDA. It is for the Revenue to prove that the subject matter of the land falls within any of the municipality as notified for the purposes of treating the said land as capital asset. We found on facts that the Revenue has failed to prove that the land falls within any municipality and therefore, in our considered opinion, the land continues to be agricultural and therefore, the transfer of said land would not

attract any long term capital gain. We are also of the opinion that the assessee has also proved that the land was subjected to agricultural activities and therefore, has fulfilled all the requirements of law for the purpose of treating it as agricultural land. For the said purposes, the assessee has relied upon the decision of Vizag Tribunal in the case of Chalasani Naga Ratna Kumari Vs. ITO (ITA No.639/Viz/2013 for A.Y. 2009-10). In view of the above, the appeal of the assessee is required to be allowed. Before we part with, we may like to bring on record the reliance placed by the assessee in the case of Smt. T. Urmila Vs. Income Tax Officer (ITA No.398/Hyd/2012 dt.12.12.2012), whereby the co-ordinate Bench of the Tribunal has decided the identical issue in favour of the assessee, and we may fruitfully rely on the said order. The relevant portion of the said order reads as under:

*“77. We have carefully gone through the notification issued by the Central Government u/s. 2(1A)(c) proviso (ii)(B) and 2(14)(3b) vide No. 9447 (F. No. 164/(3)/87/ITA-I) dated 6th January, 1994 as amended by notification No. 11186 dated 28th December, 1999. In the schedule annexed to the notification dated 6.1.1994, Entry No. 17 is relating to Hyderabad wherein mentioned that the areas up to a distance of 8 km from the municipal limits in all directions. In the notification 11186 dated 28.12.1999 there is no entry relating to Hyderabad. It is clear from these notifications that agricultural land situated in areas lying within a distance not exceeding 8 km from the local limits of Hyderabad Municipality (GHMC) is covered by the amended definitions of 'capital asset'. Central Government in exercise of such powers has issued the above notification, as amended latest by Notification No. 11186 dated 28.12.1999 clearly clarifies that agricultural land situation in rural areas, areas outside the Municipality or cantonment board etc., having a population of not less than 10,000 and also beyond the distance notified by Central Government from local limits i.e. the outer limits of any such municipality or cantonment board etc., still continues to be excluded from the definition of 'capital asset'. Accordingly, in view of sub-clause (b) of*

*section 2(14)(iii) of the Act even under the amended definition of expression 'capital asset', the agricultural land situated in rural areas continues to be excluded from that definition. And as in the present case, admittedly, the agricultural land of the assessee is outside the Municipal Limits of Hyderabad Municipality and that also 8 km away from the outer limits of this Municipality, assessee's land does not come within the purview of section 2(14)(iii) either under sub clause (a) or (b) of the Act, hence the same cannot be considered as capital asset within the meaning of this section. Hence, no capital gain tax can be charged on the sale transaction of this land entered by the assessee. This is supported by the order of Kolkata Bench of this Tribunal in the case of Arijit Mitra (cited supra), Harish V. Milani (supra) and M.S. Srinivas Naicker vs. ITO (292 ITR 481) (Mad). By borrowing the meaning from the above section, we are not able to appreciate that the land falls within the territorial limit of any municipality without notification of Central Government as held by the Karnataka High Court in the case of Madhukumar N. (HUF) (cited supra).*

*78. Further, the Visakhapatnam Bench in the case of Tadavarthy Kanakavalli w/o. T. Dasaratha Rama Rao in ITA No. 74/Vizag/2011 and CO No. 3/Vizag/2011 considered the similar issue of taxability of agricultural land on sale covered by this Notification No. GO MS 352 (MA) dated 30.7.2001. Vide order dated 4.7.2011 the Tribunal held in para 4 as follows:*

*"4. The grounds numbered as 1, 2 and 7 in the appeal of the revenue are general in nature and hence require no adjudication. In the grounds numbered as 5 and 6, the revenue is raising a new claim that the impugned lands fall within the limits of area declared as special development area by G.O. Ms. No. 352, MA, dtd. 30-7-2001 issued by the Municipal administration and urban development, Government of Andhra Pradesh. However, we notice that this was not the case of the assessing officer for bringing the impugned gain on sale of land. Secondly, it was not shown that the authority concerned with the development of the areas is a municipality as defined u/s 2(14) of the Act. As per the provisions of sec. 2(14)(iii) of the Act, the agricultural land will fall in the definition of 'Capital asset' only if it is situate in any area which is comprised within the jurisdiction of a municipality (whether known as municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name)... In view of the above cited reasons, we do not find any merit in the said grounds and accordingly dismiss them."*

*79. Further, we make it clear that when the land which does not fall under the provisions of section 2(14)(iii) of the IT Act and an assessee who is engaged in agricultural operations in such agricultural land and also*

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

*80. Coming to the other ground relating to granting of deduction u/s. 54F of the Act and applicability of section 10(37) do not require adjudication as these grounds are held to be infructuous in view of our findings in the earlier para, as the impugned land is not a capital asset to bring the transfer of the same into taxation.*

*81. In the result, assessee appeal is partly allowed.*

12. Respectfully, following the decision of co-ordinate Bench of the Tribunal, we are of the opinion that this issue is required to be decided in favour of the assessee and against the Revenue. Accordingly, the appeal of the assessee is allowed.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 4<sup>th</sup> February, 2025.

**Sd/-**

**Sd/-**

|  |   |
|--|---|
| <b>(BALAKRISHNAN S.)<br/>ACCOUNTANT MEMBER</b> | <b>(LALIET KUMAR)<br/>JUDICIAL MEMBER</b> |
|--|---|

Visakhapatnam, dated 04.02.2025.

***TYNN/sps***

Copy to:

| S.No | Addresses   |
|------|---|
| 1    | Venkataram Spinning Mills Private Limited, 5-60-2/195, 4/2 Ashok Nagar, Guntur. |
| 2    | The Income Tax Officer, Ward 2(1), Guntur.                                      |
| 3    | Prl.CIT, Visakhapatnam.   |
| 7    | DR, ITAT, Visakhapatnam Bench.  |
| 8    | Guard File  |

*By Order*