आयकर अपीलीय न्यायाधिकरण में, हैदराबाद 'बी' बेंच, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री मधुसूदन सावडिया, माननीय लेखा सदस्य
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आयकरअपीलसं./**I.T.A.No.58/Hyd/2020**
(निर्धारण वर्ष/ **Assessment Year : 2008-09)**

Krishna Kishore Reddy Manyam. R/o. Hyderabad. PAN : AHQPM0086M.		Income Tax Officer, Ward – 6(4), Hyderabad.
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri K.C. Devdas, C.A.
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Sachin Kumar, Sr.D.R
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	24.04.2025
घोषणा की तारीख/Date of Pronouncement	:	02.06.2025

O R D E R

प्रति रवीश सूद, जे.एम./**PER RAVISH SOOD, J.M.**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), Hyderabad – 10, dated 24.10.2019, which in turn arises from the

order passed by the A.O. under Section 143(3) of the Income Tax Act, 1961 (for short, "the Act") dated 29.12.2010 for A.Y. 2008-09. The assessee has assailed the impugned order on the following grounds of appeal before us:

> "1. The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.
>
> 2. The Hon'ble CIT(A) is not justified in holding that the land sold was capital asset within the meaning of Section 2(14) of the IT Act ignoring the fact that the land in question was agricultural land.
>
> 3. The Hon'ble CIT(A) ought to have observed that the sale proceeds of such agricultural land would not come within the purview of capital gain liable for Income Tax.
>
> 4. The Hon'ble CIT(A) ought to have observed that land in question was outside the Municipal limits of Rajendranagar Municipality and therefore not liable to capital gain tax in the light of decision of various judicial decisions.
>
> 5. The Hon'ble CIT(A) ought to have directed the assessing officer to allow further claim of expenditure towards cost of acquisition of Rs.70,17,970/- (indexed cost of acquisition) while calculating long term capital gain.
>
> 6. In the facts and circumstances of the case, the Hon'ble CIT(A) ought to have directed the assessing officer to allow entire claim of the assesse amounting to Rs.3,14,19,300/- u/s.548 of the IT Act.
>
> 7. The Hon'ble CIT(A) is not justified with regard to further restricting the claim u/s.548 to Rs.1,01,07,115/- as against Rs.1,17,15,000/- allowed by the assessing officer.
>
> 8. The Hon'ble CIT(A) without giving any enhancement notice ought not to have restricted the deduction u/s.54B to Rs.1,01,07,115/- as against Rs.1,17,15,000/-allowed by the assessing officer.
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> 9. The Hon'ble CIT(A) ought to have directed the assessing officer to allow claim of the assesse u/s.54F of the IT Act which was completed rejected by the assessing officer.
>
> 10. The Hon'ble CIT(A) ought to have directed the assessing officer to allow the entire claim u/s.54F of the IT Act amounting to

Rs.2,53,56,201/- instead of reworking out of the same (by the Hon'ble CIT(A) to) Rs.1,62,00,000/-.

11. Any other ground will be raised at the time of hearing of appeal."

2. Succinctly stated, the assessee had filed his return of income for A.Y. 2008-09 on 29.12.2008, declaring an income of Rs.6,28,250/- along with agriculture income of Rs.1,60,600/-. Thereafter, the assessee filed a "revised" return of income on 30.03.2009, wherein he had declared an income of Rs.50,72,667/- along with agriculture income of Rs.1,60,600/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Section 143(2) of the Act.

3. During the course of assessment proceedings, it was observed by the A.O. that the assessee in his "revised" return of income had admitted "Long Term Capital Gain" (LTCG) of Rs.6,04,32,280/- arising from the sale of agricultural lands situated at Village: Manchirevula falling within the Rajendranagar Municipality. The A.O. observed that the assessee had against the LTCG of Rs.6.04 crore (approx.) claimed exemptions under Section 54B of Rs.3,14,19,300/- and Section 54F of Rs.2,53,56,201/-.

4. On being queried, the assessee to support his claim for exemption under Section 54B of the Act filed with the A.O. copies of the sale deeds/sale agreements evidencing investments in agricultural lands of Rs.1,17,75,000/-. However, the assessee despite sufficient opportunity, failed to place on record any evidence of investment made by him towards the purchase or construction of a residential house in support of his claim for exemption raised under Section 54F of the Act. Apart from that, the A.O. in the absence of any evidence substantiating the assessee's claim for deduction of expenditure incurred both towards acquiring and improving the subject land, viz. (i). commission expenditure (claimed to have been paid at the time of purchase of land): Rs.10 lacs; and (ii). Indexed cost of development: Rs.82,05,632/-, disallowed the same.

5. Ostensibly, the assessee during the course of the assessment proceedings came up with a new claim, wherein based on a revised statement of computation of income that was filed with the A.O. on 29.08.2010, it was claimed by him that as the agricultural land situated at Village: Manchirevula was not a "capital asset" within

the meaning of Section 2(14) of the Act, therefore, the profit/gain arising on the transfer of the same was not exigible to tax. For the sake of clarity, the claim of the assessee that the gain arising on the transfer of agricultural land situated at Village: Manchirevula was not liable to be taxed is culled out as under:

> "(i) The agricultural land sold is situated at Manchirevula village, Rajendranagar Mandal, R.R.Dist and the sale of land under consideration was made through Rajendranagar Revenue authorities.
>
> (ii) The said agricultural land is within the Rajendranagar Mandal and Rajendranagar Muncipality. Rajendranagar Municipality is not a notified Municipality for the purpose of treating agricultural land as a capital asset for the purpose of Section 2(14) of the I.T. Act, 1961.
>
> (iii) Rajendranagar Municipality is not a municipality notified by Central Government as envisaged u/s 2(14)(iii)(a) of the I.T.Act, 1961. As the nearest municipality is Rajendranagar Municipality, the question of applying 8 Kms limit from the Municipal limits of twin cities does not arise as held by ITAT, Hyderabad in the case of Srinivas Pandit (HUF) Vs. ITO (ITA No.56/Hyd/2007).

6. However, the aforesaid claim of the assessee that the subject land i.e. agricultural land situated at Village: Manchirevula was not a "capital asset" did not find favour with the A.O. The A.O. observed that the State Government of Andhra Pradesh had on 16.04.2007 issued a Notification (published on the same date in A.P. Gazette under G.O.Ms.No.261) as per which the limits of the erstwhile Hyderabad Municipal Corporation (for short, "HMC")

were altered by including areas covered by 12 adjacent Municipalities and Greater Hyderabad Municipal Corporation (for short, "GHMC") was constituted. It was observed by him that "Rajendranagar Municipality" was one such Municipality that was included within GHMC. The A.O. based on his aforesaid observation was of the view that as the subject land, i.e. agricultural land situated at Village: Manchirevula as per the aforesaid notification dated 16.04.2007 was included within GHMC, therefore, the same fell within the meaning of "capital asset" as per the express provisions of Section 2(14)(iii)(a) of the Act. Also, the A.O. observed, that now when the agricultural land situated at Village: Manchirevula on 07.09.2007 was situated within GHMC, and thus, a "capital asset" u/s 2(14)(iii)(a) of the Act, therefore, the contentions of the assessee regarding the wrong application of distance of 8 Kms from the municipal limits of HMC were no more relevant. Apart from that, the A.O. observed that though the subject agricultural land was outside the municipal limits at the time of purchase but at the time of sale fell within the extended municipal limits of GHMC, therefore, the same was brought within the meaning of a "capital asset" u/s 2(14)(iii)(a) of

the Act. Accordingly, the A.O. based on his aforesaid observations, concluded that as the agricultural land sold by the assessee at the time of sale was an "urban land" and hence, a "capital asset" within the meaning of Section 2(14)(iii)(a) of the Act, therefore, the gain arising on the sale of the same was exigible to tax. Accordingly, the A.O. based on his aforesaid deliberations, reworked out the LTCG on the sale of the subject agricultural land at Rs.5,69,67,912/-.

7. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Apropos the assessee's claim that as the agricultural land was situated within the municipal limits of Rajendranagar Municipality which was not a notified municipality under Section 2(14)(iii)(b) of the Act, therefore, the same cannot be treated as a "capital asset", the CIT(A) did not find favour with the same. The CIT(A) relied upon the judgment of the **Hon'ble Punjab and Haryana High Court** in the case of **CIT Vs. Smt. Anjana Sehgal, ITA No. 276 of 2004; dated 01.03.2011**, wherein it was held that the land will be held as "urban land" if the same falls within the distance of 8 Kms. from the limits of any notified municipality. The

CIT(A) observed that the aforesaid judgment in the case of Anjana Sehgal (supra) was followed by the jurisdictional ITAT, Hyderabad in the case of **Gousia Begum Vs. Dy. CIT in ITA No.1024/Hyd/2011, dated 16.01.2012**. Also, the CIT(A) had drawn support from the judgment of the **Hon'ble High Court of Andhra Pradesh** in **CIT Vs. Bolla Ramaiah (1988) 174 ITR 154 (AP)**, wherein under similar circumstances, it was held that capital gains arising on the sale of land situated within 8 Kms. of local limits of Hyderabad Municipality is liable for tax, irrespective of the fact whether or not it falls under the limits of Rajendranagar Mandal or otherwise. Accordingly, the CIT(A) based on the aforesaid judicial pronouncements, observed, that as the agricultural land sold by the assessee was located within 8 Km from the municipal limits of GHMC, therefore, the same was a "capital asset" within meaning of Section 2(14) of the Act.

8. On merits, the CIT(A) observed that the assessee after having sold the subject land vide sale deed dt.07.09.2007, had invested in a "new asset" i.e. a residential house, vide a registered sale deed dated 23.07.2011 an amount of Rs. 90 lac. Apart from that, it was

observed by him that the assessee had made payments of Rs.72 lacs towards the construction/renovation based on an unregistered agreement dated 18.04.2008 in respect of the new house property. Considering the aforesaid facts, the CIT(A) accepted the assessee's claim for exemption under Section 54F of the Act to the extent of Rs.1.62 lacs (Rs.92 lacs + Rs.72 lacs).

9. Apropos, the assessee's claim for exemption under Section 54B of Rs.3,14,19,300/-, the CIT(A) observed that the A.O. had while framing the assessment allowed the same based on the documentary evidence that was furnished by the assessee in respect of the purchase of new agricultural lands only to the extent of Rs.1,17,15,000/-. However, it was observed by him that the A.O. vide his "remand report", dated 04.07.2012, had furnished an "annexure" containing a detailed report, wherein it was stated by him that the eligible amount of exemption u/s 54B amounted to Rs.29,50,155/-. The CIT(A) based on the aforesaid "remand report" called upon the assessee/appellant to show cause as to why his income may not be enhanced by restricting the claim for exemption under Section 54B to Rs.29,50,155/-. In reply, the

assessee filed his explanation regarding the observations of the A.O. in the "remand report" and also the enhancement notice. The CIT(A) based on the facts before him called upon the A.O. to carry out further inquiries and submit his report. In compliance, the A.O. filed his "remand report" dt.22.06.2015, wherein it was now stated by him that the assessee had invested in agricultural lands an amount of Rs. 85 lacs. However, the CIT(A) after considering the reasons given by the A.O. in his "remand report" dated 04.07.2012 (supra), observed that the eligible amount of the assessee's claim for exemption under Section 54B amounted to Rs.29,50,155/-. At the same time, the CIT(A) accepted the assessee's claim for exemption under Section 54B, i.e the investments in two properties which though were made by him vide registered sale deeds but in the name of his wife amounting to Rs.71,56,960/-. Accordingly, the CIT(A) based on his aforesaid observations allowed the assessee's claim for exemption under Section 54B of Rs. 1,01,07,115/- (Rs. 71,56,960/- + Rs. 29,50,155/-).

10. Apropos the assessee's claim for deduction of the cost of improvement of Rs.39,20,100/- and Rs.15,80,000/-, the CIT(A) observed that in the absence of any documentary evidence to substantiate the aforesaid claim for deduction, the same did not merit acceptance. At the same time, the CIT(A) was of the view that as the assessee had at the time of purchase of the subject land incurred the commission expenditure of Rs.10 lac through two cheques drawn on ABN Amro Bank, viz. (i). Cheque No. 625970, dated 20.08.2002: Rs. 5,00,000/-; and (ii). Cheque No. 626178, dated 28.08.2002, directed the A.O. to allow the same while working out the Indexed cost of acquisition. Accordingly, the CIT(A) based on his aforesaid deliberations partly allowed the appeal.

11. The assessee being aggrieved with the order of CIT(A) has carried the matter in appeal before us.

12. We have heard the learned Authorized Representatives of both parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial

pronouncements that were pressed into service by the ld.AR to drive home his contentions.

13. Shri K.C. Devdas, Advocate, learned Authorized Representative (for short, "ld. AR") for the assessee, at the threshold of hearing, submitted that as the agricultural land situated at Village: Manchirevula, Rajendranagar Mandal, Ranga Reddy District was not a "capital asset" u/s 2(14) of the Act, therefore, the profit/gain arising on the sale of the same could not have been brought to tax under the head "Long Term Capital Gain " (LTCG). Elaborating on his contention, the Ld. AR submitted that as Village: Manchirevula falls within Rajendranagar Revenue Mandal, therefore, it could not have been taken as a part and parcel of Hyderabad Municipal Corporation. The Ld. AR submitted that "Rajendranagar" is also one of the Municipal Corporation. Elaborating further on his contention, the Ld. AR submitted that as the agricultural land at Village: Manchirevula was admittedly situated in Rajendranagar Revenue Mandal, which falls within Rajendranagar i.e. one of the Municipal Corporation, therefore, there was no justification for the A.O. to have applied the 8 Kms.

radius that was notified by the Government under Section 2(14)(iii)(b) of the Act, vide *"Notification No. S.O……..,dated January 06, 1984"* for the municipal limits of Hyderabad. To sum up, it was the Ld. AR's claim that as the agricultural land sold by the assessee was within the administrative jurisdiction of Rajendranagar Municipality and not Hyderabad Municipality, therefore, it was fallacious on the part of the authorities below to reckon the distance of the subject land considering the radius of 8 Kms. notified for the Municipality of Hyderabad, and thus, bring it within the meaning of a "capital asset" under Section 2(14)(iii)(b) of the Act. The Ld. AR to support his contention had relied upon the order of **ITAT, Hyderabad Bench "B"** in the case of **Shri Srinivas Pandit (HUF) Vs. ITO, Ward 7(4), Hyderabad, ITA No.56/Hyd/2007, dt.23.04.2010.** The Ld. AR submitted that the Tribunal in its order, had observed, that since Rajendranagar Municipality is admittedly not notified by the Central Government, therefore, the agricultural land in the case before them could not have been treated as a "capital asset" by taking the distance from the limits of Hyderabad Municipality. Elaborating further on his contention, the Ld. AR submitted that the Tribunal in its order had

drawn support from the view taken by the co-ordinate Bench of the **ITAT, Amritsar** in the case of **DCIT Vs. Capital Local Area Bank Limited 123 TTJ (ASR) 918 (2009)**. Further, the Ld. DR submitted that the order of the ITAT in Shri Srinivas Pandit (HUF) (supra) had been upheld by the Hon'ble High Court vide its order dated 04.07.2013, Pages 1 and 2 of APB. The Ld. AR had drawn our attention to the judgment of the **Hon'ble High Court of Andhra Pradesh** in the case of **CIT Vs. Sri Srinivas Pandit (HUF) in ITA No.195 of 2013, dt.04.07.2013**. The Ld. AR submitted that the Hon'ble High Court in its order had approved the view taken by the Tribunal, and observed that as there was nothing before them which would reveal that the decision of ITAT in the case of DCIT Vs. Capital Local Area Bank Limited (supra) had been challenged or upset, therefore, the appeal of the revenue cannot be admitted to unsettle the settled issue. The Ld. AR submitted that as the issue involved in the present appeal was no more *res integra* in the backdrop of the aforesaid order of the Hon'ble High Court, therefore, the observation of the A.O. that the agricultural land situated in Village Manchirevula was to be held as a “capital asset” under Section 2(14)(iii)(b) of the Act by reckoning its

distance from the municipal limits of Hyderabad was based on a wrong application of the law, and thus, cannot be sustained. The Ld. AR on being confronted with the fact that the Government of Andhra Pradesh vide its Notification GOM No. 261, MA & UD (Ele.II) Department dated 16.04.2007 had merged 12 municipalities (including Rajendranagar municipality) and 8 Gram Panchayats with the Municipal Corporation of Hyderabad and established Greater Hyderabad Municipal Corporation (GHMC), Page Nos. 18 to 21 of APB, submitted that the said notification no. 261 (supra) had thereafter vide GOMs No. 12, dated 07.01.2014 giving effect to the Hon'ble High Courts orders, dated 26.09.2013 in W.P No. 26350 of 2013 and batch cases had been canceled., Page Nos. 5 & 6 of APB. It was, thus, the Ld. ARs contention that the Governments notification No. 261 (supra) pursuant to the Hon'ble High Court orders dated 26.09.2013 in W.P No. 26350 of 2013 was canceled by the Government vide its GOMs No. 12, dated 07.01.2014.

14. On merits, the Ld. AR submitted that the CIT(A) had arbitrarily restricted the assessee's claim for exemption under

Section 54B to Rs.1,07,07,115/-. Elaborating on his contention, the Ld. AR submitted that the authorities below had grossly erred in restricting the assessee's claim for exemption on two counts, viz. (i). that the investments made by the assessee for the purchase of agricultural lands through "agreements to sell" had not been considered; and (ii). though the CIT(A) had observed that it was established that the assessee had made payments/invested to the extent mentioned in the "agreements to sell", but had thereafter most arbitrarily concluded that the exemption was to be allowed only to the extent of the value reflected in the corresponding registered sale deeds.

15. The Ld. AR further submitted that the authorities below had erred in not appreciating the facts in the right perspective, and had most arbitrarily restricted the assessee's claim for exemption u/s 54F to an amount of Rs.1,62,00,000/-

16. Apart from that, the Ld. AR submitted that both the authorities below have without any justification scrapped the assessee's claim for deduction of the indexed cost of improvement amounting to Rs.82,50,632/-.

17. Per contra, Dr. Sachin Kumar, the learned Senior Departmental Representative (for short "ld. DR") relied upon the orders of lower authorities. The Ld. DR submitted that on 16.04.2007, GHMC was formed, by merging 12 Municipalities and 8 Gram Panchayats with the Municipal Corporation of Hyderabad. It was submitted by him that "Rajendranagar Municipality" was, inter alia, one of the 12 municipalities that was merged into GHMC. Elaborating further on his contention, the Ld. DR submitted that as on the date when the assessee had sold the agricultural land i.e. on 07.09.2007 the "Rajendranagar Municipality" was no more in existence and had merged with GHMC, therefore, there was no substance in the ld. AR's claim that the A.O. had erred in treating the agricultural lands as a "capital asset" for the reason that the same was within a distance of 8 Km. from the municipal limits of Hyderabad. The Ld. DR submitted that as the agricultural land sold by the assessee was within a distance of 8 Kms. from the municipal limits of Hyderabad (GHMC), therefore, the same had rightly been held by the CIT(A)

as a "capital asset" u/s 2(14)(iii)(b) of the Act. On merits, the Ld. DR relied upon the orders of lower authorities.

18. We have thoughtfully considered the contentions advanced by the Ld. Authorized Representatives on the aforesaid issues in the backdrop of the orders of the lower authorities.

19. Controversy involved in the present appeal is two-fold i.e. (i). that whether or not the agricultural land at village: manchirevula (supra) sold by the assessee during the subject year was on the date of sale i.e 07.09.2007 a "capital asset"?; and (ii). that whether or not the CIT(A) is right in law and facts of the case in restricting the assessee's claim for exemption u/ss. 54B and 54F of the Act, and also declining his claim for deduction of Indexed cost of acquisition?.

20. At the threshold, we may herein observe that the **ITAT, Hyderabad Bench "B"** in the case of **Shri Srinivas Pandit (HUF) Vs. ITO, Ward 7(4), Hyderabad, ITA No.56/Hyd/2007, dt. 23.04.2010**, for **A.Y 2003-04** had observed, that since Rajendranagar Municipality was not admittedly notified by the

Central Government, therefore, the agricultural land in the case before them which was within the administrative jurisdiction of "Rajendranagar Municipality" could not be held to be a "capital asset", based on the fact that the same was situated within the notified distance of 8 Kms from the Hyderabad Municipality i.e a separate municipality. As observed hereinabove, the Tribunal, while so concluding had drawn support from the order of ITAT, Amritsar in the case of DCIT Vs. Capital Local Area Bank Limited (2009) 123 TTJ 918 (Amritsar). For the sake of clarity, the observations recorded by the Tribunal in the case of **Shri Srinivas Pandit (HUF) Vs. ITO, Ward 7(4), Hyderabad** are culled out as under:

> 8. We have also carefully gone through the provisions of section 2(14)(iii) of the Act. Section 2(14)(iii) (b) clearly says that any area within such distance not being more than 8 kms from the local limits of any municipality, has to be treated as capital asset for the purpose of Income Tax Act. The Legislature used the word 'any municipality'. When the legislature used 'any municipality', the question is can it be a Hyderabad Municipal Corporation or it be a Rajendra Nagar Municipality. This question of assessee's is important since Himayatsagar Village falls within Rajendra Nagar Mandal. If it is Hyderabad Municipal Corporation, then it may fall within 8 kms as contended by the Revenue. If it is Rajendra Nagar Municipality, then admittedly, Himayatsagar Village is situated beyond the Rajendra Nagar Municipality. Moreover, Rajendra Nagar Municipality was not notified by the central Govt. for the purpose of provisions of sec.2(14)(iii) of the IT Act. These issues were not considered by either the Apex high Court or

A.P. High Court in Gemini Pictures (P) Ltd. (Supra), G.M. Omar Khan (Supra) and in Bolla Ramaiah (supra). Therefore, these judgements may not be of any assistance to the Revenue.

9. The Amritsar Bench of the Tribunal had an occasion to consider this issue specifically in DCIT Vs.Capital Local Area Bank Ltd., (123 TTJ (Asr)918 (2009). After considering the provisions of sec.2(14)(iii) and the concept of municipality Amritsar Bench has observed as follows in Para Nos. 24 to 29:

24. A plain reading of s.2(14)(iii) shows that agricultural land situated in any area comprised within the jurisdiction of municipality where the population is not less than ten thousand as per the last preceding census before the first day of the previous year does fall within the meaning of 'capital asset' as defined by section 2(14) and any agricultural land within 8 kms. from the local limits of such municipality, as notified by the Central Govt. in the Office Gazette, also does fall within the definition of 'capital asset' as prescribed in s.2(14) of the Act.

25. The AO in the present case observed that even if it was taken that the land in question lies beyond the municipal limits of Phagwara, it is situated within 8 kms. Of the municipal limits of Jalandhar City and that thus also, this land falls outside the exemption provided by s.2(14) of the IT Act. The issue is as to whether the assessing officer was correct in holding so.

26. The AO seems to have taken that what is envisaged by s.2(14)(iii)(b) of the IT Act is that if a land lies beyond (sic within) 8 kms. From the local limits of any municipality, it falls outside the scope of the exemption provided by s.2(14) of the Act.

27. In considering so, however, the AO appears to have lost sight of the fact that the words 'any municipality' in s.2(14) (iii)(b0 cannot be read divorced from their qualifying words, i.e. referred to item (a), lest they lose their legislative intent. The AO seems to have read 'municipality' mentioned in S.2(14)(iii) (b) to mean any municipality having a population of not less than ten thousand according to the last preceding census, of which the relevant figures have been published before the first day of the previous year.

28. Now the municipality detailed in s.2(14)(iii)(a) is the municipality within the jurisdiction of which the area, in which the concerned land is situated is comprised and which has a population of not less than ten thousand according to the last preceding census, of which the relevant figures have been published before the first day of the previous year. Both these conditions are concurrent and not mutually exclusive. The municipality must have jurisdiction over the land as well as it must have a population of more than ten thousand as per the last preceding census of which the relevant figures have been published before the last day of the previous year. And the primary requirement is that of jurisdiction of the municipality over the land.

If a municipality does not have jurisdiction over the land. If a municipality does not have jurisdiction over the land, it is not the municipality mentioned in s.2(14) (iii) (b). In Municipal Corporation for the City of Bombay Vs. CIT (1984) 16 ITR 165 (Bom) it has been held inter alia, to the effect that jurisdiction of a municipality does not extend outside its prescribed area of jurisdiction.

29. "From the above, it becomes amply clear that the 'municipality' referred to in s.2(14) (iii) (b) of the IT Act is the very one referred in s.2(14) (a). To reiterate, s.2(14)(iii)(b) is unambiguous in as much as it uses the expression 'referred to in item (a)'. Taking any other interpretation of the section, as has been done by the AO in the present case, would amount to nothing other than gross misreading and misinterpretation of s.2(14)(iii) (b)".

10. Amritsar Bench further observed as follows at Para Nos. 73, 74 and 75:

73. Now, as per s.2(14)(iii)(b), the central govt. is required to specify the area falling within 8 kms from the local limits of any municipality as referred to in s. 2(14)(iii)(a) by notification in the official gazette. A plain construction of s. 2(14)(iii)(b) reveals that 'capital asset' within the meaning of this section excludes agricultural land situated in any area beyond 8 kms from the local limits of any municipality having a population of at least ten thousand (as referred to in s 2(14)(iii)(a) as notified in the Official gazette by the central govt. having regard to the extent of, and scope for, urbanization of that area and other relevant considerations.

74. Therefore, if a central Government specifies, by notification in the official gazettee, any area as an area falling outside the local limits of a municipality, having regard to the extent of and scope for, urbanisation of the said area and other relevant considerations, agricultural land composed within such area shall stand excluded from the definition of capital asset as envisaged in sec. 2(14) by virtue of operation of the law contained in s. 2(14)(iii)(b) .

75. Now, in the present case, the Central Govt. issued Notification No. 9447/F.No. 164/3/87-ITA-I dated 6th January, 1994 116 CTR (St) 13 (1994) 205 ITR (St 121 by publication in the Official Gazette, in the exercise of the powers conferred by section 2 (1A) (c) proviso, clause (ii) (B) and section 2(14) (iii) (B) of the Act. Section 2 (1A) incidentally deals with "agricultural income". Subclause (A) and (B) of 2 (1A) (c) proviso, clause ii are identical to items (a & b) respectively of section 2 (14) (iii).

11. The Tribunal further observed as follows at Para Nos. 77 to 84:

77. "Now undisputedly, the land in question lies in village Khajurala, which falls in Tehsil Phagwara, District Kapurthala and is more than 2 kilometers in all directions, from the municipal limits of Phagwara Municipality. According to the notification, areas upto two kilometres away from the local limits of Phagwara Municipality stand notified as falling outside its local limits. The land in question is admittedly more than 2 kilometers from the local limits of Phagwara Municipality. It would not have fallen

within the exemption provided by s. 2(14)(iii)(b) were it situate within 2 kilometers from the local limits of Phagwara Municipality. However, it is nobody's case that the land in question is situate in an area within 2 kilometers from the local limits of Phagwara Municipality. Rather, the AO case is that though admittedly, the land is beyond the municipal limits of Phagwara it is within 8 kilometers of the municipal limits of Jalandhar City and so, it is outside the exemption of s.2(14)".

78. When the area specified in col. (4) of the notification stands identified by the central govt. with Phagwara Municipality, the AO could not hold de hors the notification to bring it within the governance of Jalandhar Municipality.

79. Now a notification u/s 2(14) (iii) of the IT Act is issued specifying areas as falling outside the local limits of a municipality 'having regard to the extent of, any scope for urbanisation of the areas concerned and other relevant consideration'.

80. Urbanizations of an area, then falls within the exclusive domain of the concerned municipality exercising regulatory as well as administrative control over such area. It is such concerned municipality, id est, the parent municipality, or jurisdictional municipality of the area, which has to carry out the urbanization of the area. Area situate within the local limits of a Gram Panchayat, when included within the limits of a city, become urban areas. Sec. 44 of the PMC Act makes it incumbent on the concerned municipal corporation established there under, to make adequate provision for the matters provided under the said section. These matters are matters concerning urbanization.

81. It is thus evident that it is the parent/jurisdictional municipality, which is responsible for the areas falling within its territorial jurisdiction and for the lands situate within such areas. Such control cannot be said to vest in any other municipality. It was only thus that the purchase and sale of the land in question was made through the Phagwara Revenue authorities and not the ones of Jalandhar. In the notification itself also, the areas falling outside the Jalandhar Municipality have been separately specified from those falling outside the Phagwara Municipality. Even the areas falling outside the Kapurthala Municipality have been separately specified, though Kapurthala is the District of which Phagwara is a Tehsil. The bye laws applicable to the area within which the land in question is situate, are the bye laws of Kapurthala District and not of Jalandhar District.

82. Reverting to the order under appeal, the learned CIT (A) has held and in our considered opinion, quite correctly that:

"The case of the AO based on observation in para 11 of the order that the land being within 8 kms. Of municipal limits of Jalandhar it was capital asset within the meaning of s. 2(14) of the IT Act. I agree that said observation was not confronted to the appellant. However, the same is considered in the light of provisions of s. 2(14)(iii) read with its cls. (a) and (b) as well as the notifications on the subject. No doubt the land falls within a distance of 8 kms. From the municipal limits in all directions as per the notification no. 9447/File No. 164/3/87 ITA 1, dt. 6th Jan. 1994 (reported in (1994) 116 CTR (St.) 113: (1994) 205 ITR (st.) 121) issued by Govt. in the context of cl. (b) of S. 2 14 (iii) of the IT Act. But the relevant land is outside

the jurisdiction of Jalandhar District because it is in the jurisdiction of Kapurthala District nearer to its Tehsil Phagwara. As per the said notification the areas specified in Phagwara Municipality cannot be related with Jalandhar, against which the areas have been separately specified. Being outside the area of Jalandhar District all the bye laws which are applicable in that area are of Kapurthala District. Due to the said fact the purchase as well as the sale transactions of the said land were carried out through the offices of Land Revenue Authorities at Phagwara than at Jalandhar. For all the regulatory and administrative controls it falls within the jurisdiction of Kapurthala District. Therefore, the observation of the AO that it becomes a capital asset being falling within 8 kms of municipal limit of Jalandhar cannot be upheld in view of the notification and the peculiar placement of the land".

83. The AO in this regard held as follows:

"Even if it is admitted that it is beyond the municipal limits of Phagwara, however, the land in question is within 8 km of the municipal limits of Jalandhar City and on this very ground also the land in question is outside the exemption provided u/s 2(14) of the IT Act".

84. The conclusion of the AO, therefore, as seen in the preceding Paras, is a non est conclusion, arrived at in oblivion of the settled law on the subject, statutory as well as precedent. The learned CIT(A) has ergo, correctly dissented from the conclusion of the AO that falling within 8 kms from Jalandhar, the land in question acquires the nature of a capital asset within the meaning of S.2(14) of the IT Act".

12. In this case also admittedly, the entire transactions was made through Rajendra Nagar Revenue Authorities and not through Hyderabad Revenue Authorities. Therefore, as found by the Coordinate Bench of the Tribunal in the case of Capital Local Area Bank Ltd. (supra) , the jurisdictional Municipality is Rajendra Nagar Municipality and not the Hyderabad Municipality. Since Rajendra Nagar Municipality is not admittedly notified by the Central Government, the agricultural land in question cannot be treated as capital asset by taking the distance from the limits of Hyderabad Municipality. By respectfully following decisions of the Coordinate Bench cited supra, we hold that the land in question cannot be treated as capital asset within the meaning of Sec. 2(14)(iii)(b) of the IT Act. Accordingly, Orders of the lower authorities are set aside.

21. As is discernible from the record, the aforesaid order of the Tribunal had thereafter been upheld by the **Hon'ble High Court of Andhra Pradesh** and the appeal filed by the Revenue was dismissed. For the sake of clarity, the observations of the **Hon'ble High Court** are culled out as under:

> "This appeal is sought to be preferred against the judgment and order of the Tribunal dated 23.4.2010 on the following suggested questions of law for the assessment year 2003-2004:
>
> 1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the subject-land situated in Himayatsagar Village In Rajendranagar Mandal does not fall within the purview of capital asset under Section 2(14)(iii)(b) of Income Tax Act, inspite of is being situated within 8 kilometers from Hyderabad Municipal Corporation. merely because Rajendranagar Municipal Corporation constituted by the Government of Andhra Pradesh was not notified by the Union Government in terms of Sec.2(14)(iii) (b) of Income Tax Act?
>
> 2. Whether on the facts and in the circumstances of the case, the view of the Appellate Tribunal that the expression "any Municipality or Cantonment Board referred to in item (a)" found in Section 2(14)(iii) (b) of the Income Tax Act is referable to Municipality in which the concerned land is situate, can be said to be tenable in law?
>
> The learned Tribunal while rendering the decision has followed the decision of Amritsar Bench of the Tribunal in the case of DCIT Vs. Capital Local Area Bank Ltd., reported in 123 TTJ (Asr) 918 (2009). There is no statement in the appeal papers that the aforesaid judgment and order of the Amritsar Bench of the Tribunal has been challenged or upset. Therefore, we cannot admit the appeal to unsettle the settled issue.
>
> The Appeal is accordingly dismissed. No order as to costs."

22. We respectfully follow the aforesaid judgment of the **Hon'ble High Court** in the case of **CIT Vs. Sri Srinivas Pandit (HUF) (supra)**, wherein the order of the Tribunal disposing off the assessee's appeal for A.Y 2003-04 stands approved. The Tribunal in its order had observed, that as the agricultural land in the case before them was situated within Rajendranagar Mandal and Rajendranagar is a separate Municipal Corporation, which though was not notified by the Central Government for the purpose of Section 2(14)(iii)(b) of the Act, the subject agricultural land could not be held to be a "capital asset" based on the fact that the same is situated within the notified distance of 8 Kms from the Hyderabad Municipality i.e a separate municipality. However, we are of the view that as the facts involved in the case before us are distinguishable, therefore, the reliance placed by the ld.AR from the aforesaid judicial pronouncement will not assist his case for the reasons stated hereinafter.

23. On 16.04.2007, the Government of Andhra Pradesh vide its Notification published in the A.P. Gazette, dated 16.04.2007, had abolished 12 municipalities which, inter alia, included

Rajendranagar Municipality. That pursuant to the Notification dated 16.04.2007 (supra) the areas covered by the aforesaid 12 municipalities were included in the limits of "Hyderabad Municipal Corporation" (HMC), so as to constitute the "Greater Hyderabad Municipal Corporation" (GHMC). For the sake of clarity, the G.O.Ms.No.261, dated 16.04.2007 along with the Notification issued by the Government of Andhra Pradesh is culled out as under:

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

M.A. & U.D. Dept. – Municipal Corporations – Establishment of Greater Hyderabad Municipal Corporation -Orders – Issued.

MUNICIPAL ADMINISTRATION & URBAN DEVELOPMENT (Elec.II) DEPARTMENT

G.O.Ms. No.261 Dated: 16th April, 2007

Read the following:-

1. G.O.Ms. No. 703 M.A. & U.D. (Elec.II) Dept. dated 20-7-2005.
2. G.O.Ms. No. 704 M.A. & U.D. (Elec.II) Dept. dated 20-7-2005.
3. From the Commissioner, MCH Lr. No.6960/Elecs.MCH/2005 dated 4-8-2005 along with a copy of C.R. No. 144 dated 4-8-2005 of the Council of MCH.
4. Judgment dated 31-1-2007 of Hon'ble High Court of A.P passed in W.P Nos. 17524, 17525 and 18249 of 2005.
5. Govt. Memo No. 12417/Elec.II/2005 dated 24-2-2007 addressed to the Council of Municipal Corporation and Council of Gaddiannaram Municipality.
6. From the Commissioner, Gaddiannaram Municipality Lr. No. GMC/C1/754/2005 dated 28-2-2007.
7. Resolution No.2 dated 2-3-2007 of the Council of MCH.
8. Govt. Memo No.12417/Elec.II/2005 M.A & U.D (Elec.II) Dept. dated 13-4-2007.
9. G.O.Ms. No. 247 M.A & U.D (Elec.II) Dept. dated 13-4-2007.
10. G.O.Ms. No. 248 M.A & U.D (Elec.II) Dept. dated 13-4-2007.
11. G.O.Ms. No. 249 M.A & U.D (Elec.II) Dept. dated 16-4-2007.
12. G.O.Ms. No. 250 M.A & U.D (Elec.II) Dept. dated 16-4-2007.
13. G.O.Ms. No. 251 M.A & U.D (Elec.II) Dept. dated 16-4-2007.
14. G.O.Ms. No. 252 M.A & U.D (Elec.II) Dept. dated 16-4-2007.
15. G.O.Ms. No. 253 M.A & U.D (Elec.II) Dept. dated 16-4-2007.
16. G.O.Ms. No. 254 M.A & U.D (Elec.II) Dept. dated 16-4-2007.
17. G.O.Ms. No. 255 M.A & U.D (Elec.II) Dept. dated 16-4-2007.
18. G.O.Ms. No. 256 M.A & U.D (Elec.II) Dept. dated 16-4-2007.
19. G.O.Ms. No. 257 M.A & U.D (Elec.II) Dept. dated 16-4-2007.
20. G.O.Ms. No. 258 M.A & U.D (Elec.II) Dept. dated 16-4-2007.
21. G.O.Ms. No. 259 M.A & U.D (Elec.II) Dept. dated 16-4-2007.
22. G.O.Ms. No. 260 M.A & U.D (Elec.II) Dept. dated 16-4-2007.

<><><><>

ORDER:-

Vide references 1st and 2nd read above, Government proposed to constitute Greater Hyderabad Municipal Corporation with a view to facilitating improved and high standard of civic services, providing better civic administrative mechanism, ensuring better planning and focused development of the Mega city, achieving more equitable

devolution of finances and utilization of resources, ensuring uniform enforcement and to make the city internationally competitive with world class infrastructure and services by merging the following surrounding 12 Municipalities 1. L.B. Nagar 2. Gaddiannaram 3. Uppal Kalan 4. Malkajgiri 5. Kapra 6. Alwal 7. Quthbullapur 8. Kukatpally 9. Serilingampalli 10. Rajendranagar . 11. Ramachandrapuram and 12. Patancheru; and 8 Gram Panchayats 1. Shamsabad 2. Satamarri 3. Jalapalli 4. Mamidipalli 5. Mankhal 6. Almasguda 7. Sardarnagar and 8. Ravarala around Hyderabad and called for views/ objections/ suggestions if any from the Council of Municipal Corporation of Hyderabad and the public within a period of 15 days so as to take further action in the matter.

2. In the reference 3rd read above, the Council of Municipal Corporation of Hyderabad vide their Resolution No.144 dated 4-8-2005 opposed the proposal to merge the surrounding 12 Municipalities and 8 Gram Panchayats located around Hyderabad with Municipal Corporation of Hyderabad for constituting Greater Hyderabad Municipal Corporation.

3. In the reference 4th read above, the Hon'ble High Court of A.P. passed orders on 31-1-2007 and while dismissing the W.P. Nos. 17524, 17525 and 18249 of 2005 filed by some of the MLAs, Corporators etc., against the proposed constitution of Greater Hyderabad Municipal Corporation, held that:

> **"the proposed constitution of Greater Hyderabad Municipal Corporation is not ultra vires the provisions of the Constitution and Sections 3 and 679 – D of the 1955 Act and Sections 3 and 62 of the 1965 Act do not suffer from any constitutional infirmity. However, we do not find the slightest hesitation to observe that before taking final decision for creation of Greater Hyderabad Municipal Corporation, the State Government will duly consider the objections raised by the petitioners and other persons and then pass appropriate order. In order to obviate any grievance of the petitioners we deem it proper to give them opportunity to file additional objections within a period of 15 days from today and direct the State Government to consider the same before finally deciding the issue of Greater Hyderabad Municipal Corporation."**

4. In pursuance of the Court orders in the reference 4th read above, Government in the reference 5th read above issued a show cause notice to the Council of Municipal Corporation of Hyderabad and to the Council of Gaddiannaram Municipality as to why their Resolution No. 144 dated 4-8-2005 and Resolution No. 35 dated

3-8-2005 respectively should not be cancelled in the larger public interest.

5. In the reference 6th read above, the Council of Gaddiannaram have resolved that they have no objection for cancellation of their Resolution No. 35 dated 3-8-2005 made earlier as referred in the show cause notices.

6. In the reference 7th read above, the Council of Municipal Corporation of Hyderabad have resolved that they have no objection for cancellation of their Resolution No. 144 dated 4-8-2005 made earlier as referred in the show cause notices.

7. In the reference 8th read above, Government after examining the petitions received as per the notification issued vide reference 2nd read above, and those received subsequently as per the orders issued by the Hon'ble High Court in the reference 4th read above, issued orders rejecting the objections made therein to be untenable and unsustainable.

8. In the reference 9th read above, Government issued orders canceling the Resolution No. 144 dated 4-8-2005 of the Council of Municipal Corporation of Hyderabad.

9. In the reference 10th read above, Government issued orders canceling the Resolution No. 35 dated 3-8-2005 of the Council of Gaddiannaram Municipality.

10. In the references 11th to 22nd read above, Government issue orders abolishing the Municipalities 1. L.B. Nagar 2. Gaddiannara 3. Uppal Kalan 4. Malkajgiri 5. Kapra 6. Alwal 7. Quthbullap 8. Kukatpally 9. Serilingampalli 10. Rajendranag 11. Ramachandrapuram and 12. Patancheru respectively to inclu the areas covered by these Municipalities in the limits of Hyderaba Municipal Corporation so as to constitute Greater Hyderaba Municipal Corporation.

11. Government with a view to secure efficiency and economy in Municipal Administration, have decided to include the areas covered by the 12 Municipalities referred in para (1) within the limits of Hyderabad Municipal Corporation, duly altering its limits to establish Greater Hyderabad Municipal Corporation in the larger public interest. Accordingly, Government hereby include the areas covered by the 12 Municipalities referred in para (1) within the limits of Municipal Corporation of Hyderabad.

12. The following notification shall be published in the extra-ordinary issue of A.P. Gazette dated 16-4-2007.

13. The Commissioner, Printing, Stationary & Stores purchase Department, Hyderabad is requested to furnish 200 copies of conveying the publication of the said notification.

NOTIFICATION

In exercise of the powers conferred under the proviso to sub-section (1) and with sub-section (2) of Section 3 of the Hyderabad Municipal Corporations Act, 1955 (Andhra Pradesh Act 2 of 1956), the Governor of Andhra Pradesh, hereby include the areas covered by the erstwhile Municipalities viz. 1. L.B. Nagar 2. Gaddiannaram 3. Uppal Kalan 4. Malkajgiri 5. Kapra 6. Alwal 7. Quthbullapur 8. Kukatpally 9. Serilingampalli 10. Rajendranagar 11. Ramachandrapuram and 12. Patancheru within the limits of Hyderabad Municipal Corporation and establish Greater Hyderabad Municipal Corporation with immediate effect.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

S.P. SINGH
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Commissioner, Printing, Stationary & Stores purchase Department, Hyderabad.
The Council/ Special Officer, Municipal Corporation of Hyderabad
The Commissioner, Municipal Corporation of Hyderabad
The Commissioner & Director of Municipal Administration, Hyderabad
The Council/ Special Officer of 12 Municipalities
The Commissioners of 12 Municipalities
The Collector & District Magistrate, Ranga Reddy/Medak
The Director of Town and Country Planning, Hyderabad
The Engineer-in-Chief (PH), Hyderabad
The Director of Treasuries and Accounts, A.P Hyderabad
The District Treasury Officer, Ranga Reddy/Medak

Copy to:

The P.S to Spl. Secy to C.M
The P.S to M (MA)
The P.S to Prl Secy, M.A & U.D Dept.
The P.S to Secy. to M.A & U.D Dept.
The Law Department.
SF/SC

//FORWARDED BY ORDER//

SECTION OFFICER

24. Accordingly, w.e.f. 16.04.2007 the Rajendranagar Municipality was abolished. On verification, we find that as a step towards broader administrative restructuring the Village Manchirevula was transferred from "Rajendranagar Mandal" to "Gandipet Mandal" which was also in Ranga Reddy District. However, we find that "Gandipet Mandal" unlike Rajendranagar was not a separate municipality in the year 2007 but an area falling in the periphery of GHMC.

25. Apropos the Ld. ARs claim that the Government of Andhra Pradesh - Notification dated 16.04.2007 abolishing 12 municipalities which, inter alia, included "Rajendranagar Municipality", had thereafter been canceled vide G.O.Ms No. 12, dated 07.01.2014 for giving effect to the orders of the Hon'ble High Court, dated 26.09.2013 in W.P No. 26350 of 2013 and batch cases, Page 5-6 of APB, we find that the said contention in itself is based on the misconceived and incorrect set of facts.

26. Admittedly, it is a matter of fact borne from the record that the Government of Andhra Pradesh, vide its Notification dated 16.04.2007 had abolished 12 municipalities including

"Rajendranagar Municipality", and had included the areas covered by the said erstwhile municipalities in the limits of "Hyderabad Municipal Corporation" (HMC), so as to constitute the "Greater Hyderabad Municipal Corporation" (GHMC).

27. Independent of the aforesaid, the Government of Andhra Pradesh had thereafter come up with (i). G.O.Ms No. 407, MA & UD (Elec. II) Dept. dated 31.08.2013; (ii). G.O.Ms No. 410, MA & UD (Elec. II) Dept., dated 03.09.2013; and (iii). G.O.Ms No. 416, MA & UD (Elec. II) Dept., dated 05.09.2013, wherein orders were issued notifying the inclusion of areas covered by 36 Gram Panchayats which, inter alia, included Gram Panchayat of Village: Manchirerevula (Rajendranagar Manda) into the limits of GHMC. However, pursuant to the Hon'ble High Courts orders, dated 26.09.2013 in W.P. No. 26350 of 2013 and batch cases, the Government vide G.O.Ms No. 12, dated 07.01.2014 canceled the merger of the aforesaid 36 Gram Panchayats into GHMC, Page 5-6 of APB. It was, thus, the G.O.Ms No. 407, 410 & 416 MA & UD (Elec. II) Dept. of the Government of Andhra Pradesh ordering the inclusion of 36 Gram Panchayats into GHMC that had been

canceled, and not the G.O.Ms No. 261, dated 16.04.2007 abolishing the 12 Municipalities (including "Rajendranagar Municipality") and including their the areas covered by the said erstwhile municipalities in the limits of "Hyderabad Municipal Corporation" (HMC) so as to constitute the "Greater Hyderabad Municipal Corporation" (GHMC). For the sake of clarity, Government of Andhra Pradesh – G.O.Ms No. 12 and Notification, dated 07.01.2014, (Page 5-6 of APB) as per which it had canceled its Notifications issued in viz., (i). G.O.Ms No. 407, MA & UD (Elec. II) Dept. dated 31.08.2013; (ii). G.O.Ms No. 410, MA & UD (Elec. II) Dept., dated 03.09.2013; and (iii). G.O.Ms No. 416, MA & UD (Elec. II) Dept., dated 05.09.2013 on the merger of thirty six (36) Gram Panchayats into GHMC is culled out as under:

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GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Municipal Administration& Urban Development Department - Greater Hyderabad Municipal Corporation - A.P. High Court orders, dated 26.09.2013 in W.P.No. 26350 of 2013 and batch cases - Cancelation of Notification issued on merger of thirty six (36) surrounding villages into Greater Hyderabad Municipal Corporation - Orders - Issued.

MUNICIPAL ADMINISTRATION & URBAN DEVELOPMENT (ELEC.II) DEPARTMENT

G.O.Ms.No.12 Dated 07.01.2014
Read the following:

1. G.O.Ms.No. 124, MA & UD (ELEC.II) Dept., dated 26.03.2013.
2. G.O.Ms.No. 125, MA & UD (ELEC.II) Dept., dated 26.03.2013.
3. G.O.Ms.No. 364, MA & UD (ELEC.II) Dept.,dated 27.07.2013.
4. G.O.Ms.No. 365, MA & UD (ELEC.II) Dept.,dated 27.07.2013.
5. G.O.Ms.No. 407, MA & UD (ELEC.II) Dept., dated 31.08.2013.
6. G.O.Ms.No. 410, MA & UD (ELEC.II) Dept., dated 03.09.2013.
7. G.O.Ms.No. 416, MA & UD (ELEC.II) Dept., dated 05.09.2013.
8. The Hon'ble High Court orders, dated 26.09.2013 in W.P.No. 26350 of 2013 and batch cases.

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ORDER

In the G.Os 5th to 7th read above, orders were issued notifying the inclusion of areas covered by the following Gram Panchayats into the limits of Greater Hyderabad Municipal Corporation:

RAJENDRANAGAR MANDAL			
1	Gandipet	2	Manchirrevula
3	Kokapet	4	Narsingi
5	Vattinagulapalli	6	Bandlagudajagir
7	Neknampur	8	Kismatpur
9	Puppalguda	10	Himayathsagar
11	Khanapur	12	Peeramcheruvu
13	Hydershakot		
SHAMIRPET MANDAL			
14	Jawaharnagar		
SHAMSHABAD MANDAL			
15	Shamshabad	16	Satamrai
17	Kothwalguda		
QUTBULLAPUR MANDAL			
18	Pragathinagar	19	Bachupally
20	Kompally	21	Dulapally.
22	Nizampet		
GHATKESAR MANDAL			
23	Boduppal.	24	Medipally.
25	Peerzadiguda	26	Parvathapur
27	Chengicherla		
KESARA MANDAL			
28	Nagaram	29	Dammalguda
MEDCHALMANDAL			
30	GundlaPochampally		
SAROORNAGAR MANDAL			
31	Jillelguda	32	Meerpet
33	Phadishareef	34	Jalpally
35	Kothapeta		
HAYATNAGAR MANDAL			
36	Kalwancha H/o Kuntlur		

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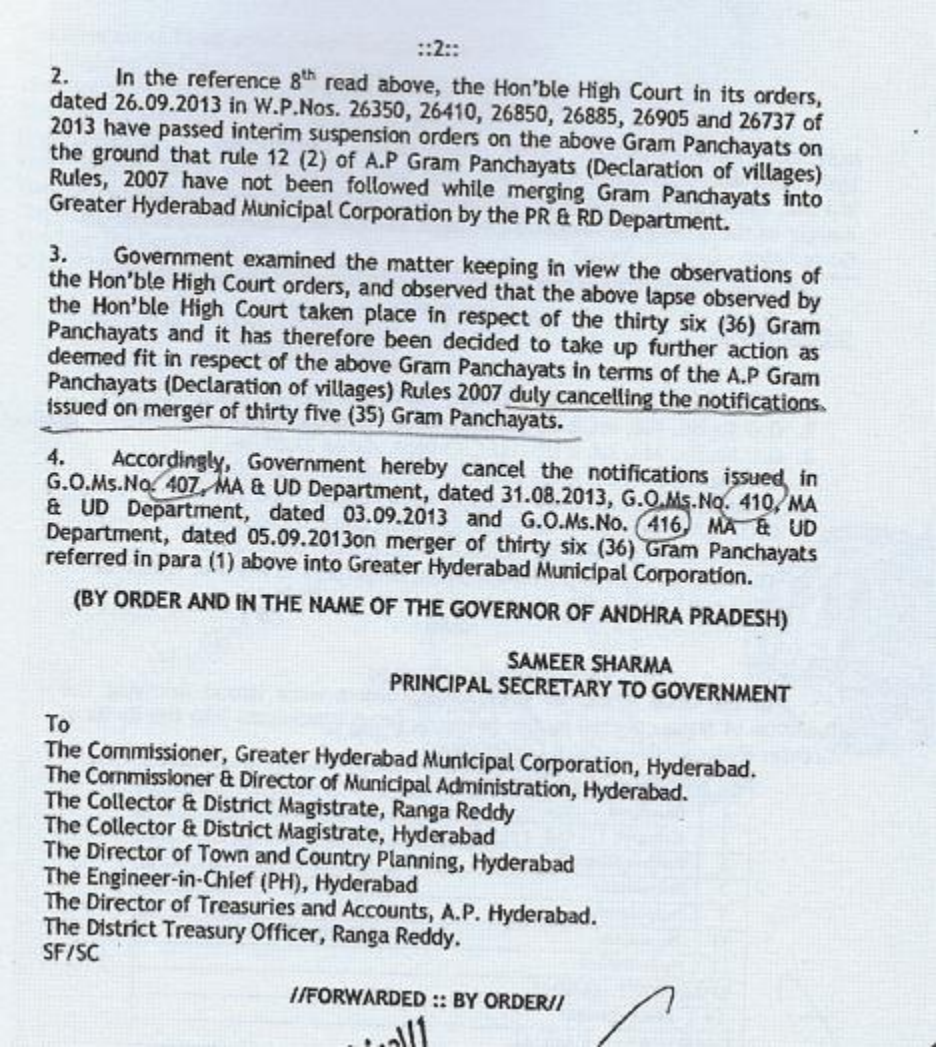

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2. In the reference 8th read above, the Hon'ble High Court in its orders, dated 26.09.2013 in W.P.Nos. 26350, 26410, 26850, 26885, 26905 and 26737 of 2013 have passed interim suspension orders on the above Gram Panchayats on the ground that rule 12 (2) of A.P Gram Panchayats (Declaration of villages) Rules, 2007 have not been followed while merging Gram Panchayats into Greater Hyderabad Municipal Corporation by the PR & RD Department.

3. Government examined the matter keeping in view the observations of the Hon'ble High Court orders, and observed that the above lapse observed by the Hon'ble High Court taken place in respect of the thirty six (36) Gram Panchayats and it has therefore been decided to take up further action as deemed fit in respect of the above Gram Panchayats in terms of the A.P Gram Panchayats (Declaration of villages) Rules 2007 duly cancelling the notifications issued on merger of thirty five (35) Gram Panchayats.

4. Accordingly, Government hereby cancel the notifications issued in G.O.Ms.No. 407, MA & UD Department, dated 31.08.2013, G.O.Ms.No. 410, MA & UD Department, dated 03.09.2013 and G.O.Ms.No. 416, MA & UD Department, dated 05.09.2013on merger of thirty six (36) Gram Panchayats referred in para (1) above into Greater Hyderabad Municipal Corporation.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

SAMEER SHARMA
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Commissioner, Greater Hyderabad Municipal Corporation, Hyderabad.
The Commissioner & Director of Municipal Administration, Hyderabad.
The Collector & District Magistrate, Ranga Reddy
The Collector & District Magistrate, Hyderabad
The Director of Town and Country Planning, Hyderabad
The Engineer-in-Chief (PH), Hyderabad
The Director of Treasuries and Accounts, A.P. Hyderabad.
The District Treasury Officer, Ranga Reddy.
SF/SC

//FORWARDED :: BY ORDER//

28. Be that as it may, pursuant to the Government of Andhra Pradesh Notification dated 16.04.2007 the "Rajendranagar Municipality" (being one of the 12 municipalities) was abolished. Also, as observed by us hereinabove, pursuant to the broader administrative restructuring the Village: Manchirevula (supra) was shifted from "Rajendranagar Mandal" to "Gandipet Mandal" w.e.f

16.04.2007. As the Rajendranagar municipality was abolished on 16.04.2007 and Village: Manchirevula (supra) had become a part of Gandipet mandal (which did not have a separate municipality) but was an area falling in the periphery of GHMC, therefore, unlike as in the case of CIT Vs. Sri Srinivas Pandit (HUF) (supra), wherein the subject land at the relevant point of time was in Rajendranagar mandal, which had a separate municipality i.e Rajendranagar municipality, the assessee in the present case before us cannot claim that as the subject land i.e at Village: Manchirevula (supra) was within a "Mandal" which had a separate administrative municipality, therefore, there was no justification for the A.O. to have applied the 8 Kms. radius that was notified by the Government under Section 2(14)(iii)(b) of the Act, vide *"Notification No. S.O……..,dated January 06, 1984"* for the municipal limits of Hyderabad (GHMC) and bring the same within the meaning of a "capital asset".

29. We thus, are of the view that as on the date when the assessee had sold his land at Village: Manchirevula, vide sale deed dt.07.09.2007, the same was in "Gandipet Mandal" which was not

a separate municipality (i.e unlike Rajendranagar), but an area falling in the periphery of GHMC i.e. erstwhile Hyderabad Municipal Corporation (HMC) – a Municipality notified by the Central Government vide its *"Notification No. So……,dt. January, 06, 1994"* for purpose of Section 2(14)(iii)(b) of the Act, therefore, no infirmity arises from the view taken by the CIT(A), who had rightly concluded that the subject agricultural land is to be held as a "capital asset" if the same was located within 8 Kms radius from the municipal limits of GHMC. However, we are of the view that as the distance of the subject agricultural land at Village: Manchirevula from the municipal limits of GHMC is neither discernible from the record; nor any details establishing the same was there before the CIT(A), therefore, the matter requires to be restored to the file of A.O. The A.O. is directed to verify the distance of the subject agricultural land at Village: Manchirevula from the municipal limits of GHMC on the date of sale i.e. on 07.09.2007. In case, the agricultural land is found to be within the notified area limit of 8 Kms. from the municipal limits of Hyderabad Municipality (now known as GHMC), then the view taken by the

CIT(A) that the same is a "capital asset" under Section 2(14)(iii)(b) of the Act will stand approved.

30. Apropos the merits of the case, we find no infirmity in the view taken by the CIT(A) who had based on the documentary evidence as was available before him, viz. (i). registered sale deed dated 23.07.2011: Rs. 90 lacs; and (ii). unregistered construction agreement dated 18.04.2008: Rs. 72 lacs, had after observing that the assessee had invested an amount of Rs.1.62 crore in the new house, allowed his claim of exemption under Section 54F of the Act to the said extent. At the same time, we are unable to concur with the CIT(A), who had observed that the payments made by the assessee towards investment in the new house property were to be allowed only to the extent the same were made by him before the "due date" for filing of his return of income. We say so, for the reason that Section 54F of the Act, *inter alia,* contemplates the utilization of the "net consideration" towards the purchase or construction of the new house before the *"date of furnishing the return of income under section 139"*, and does not mandate the utilization of the same before the "due date" for furnishing the

return of income under Section 139 of the Act. Therefore, it can safely or rather inescapably be inferred that the same takes within its meaning the time available with the assessee for filing a delayed return of income under sub-section (4) of Section 139 of the Act. Our aforesaid view is supported by the judgment of the **Hon'ble High Court of Punjab and Haryana** in the case of **CIT-II Vs. Ms. Jagriti Aggarwal in ITA 176 of 2011 dt.03.10.2011.** The Hon'ble High Court after drawing support from the judgment of the **Hon'ble High Court of Karnataka** in the case of **Fatima Vs. ITO 32 DTR 243 (Kar)**, and that of the **Hon'ble High Court of Gauhati** in the case of **CIT Vs. Rajesh Kumar Jalan (2006) 286 ITR 274 (Gauhati),** had held, that sub-section (4) of Section 139 of the Act, is in fact, a proviso to sub-section (1) of Section 139 of the Act. It was thus, held that the period available to the assessee for making the investment u/s 54 of the Act will be available up to the period contemplated under sub-section (4) of Section 139 of the Act. We thus, in terms of our aforesaid observations, direct the A.O. to allow the investment made by the assessee in the new house property up to the date of filing of the delayed return of income

under sub-section (4) of Section 139 of the Act applicable in his case.

31. Apropos the assessee's claim for exemption under Section 54B of the Act, we are of the view that no infirmity arises from the observation of the CIT(A). Although the CIT(A) had observed that as per the "agreements to sell" it was an established fact that the payments/investments made by the assessee in agricultural lands were higher than the sale consideration reflected in the sale deeds, but the value reflected in the registered sale deeds which were executed subsequent to the "agreements to sell" was only to be considered. Accordingly, we are of the view that the CIT(A) had adopted a fair approach and allowed the assessee's claim for exemption under Section 54B of the Act of Rs.1,01,07,115/-, viz. (i). agricultural lands purchased by the assessee in his own name (as per the value stated in the registered sale deed): Rs.29,50,155/-; and (ii). agricultural lands that were though purchased by the assessee from his own sources but the registered sale deeds were executed in the name of his wife: Rs. 71,56,960/-. We thus, in terms of our aforesaid observations, uphold the view

taken by the CIT(A), wherein he had restricted the assessee's claim for exemption under Section 54B of the Act to an amount of Rs.1,01,07,115/- (supra).

32. Apropos the assessee's grievance that the CIT(A) had erred in declining his claim for deduction of the Indexed cost of improvement of Rs.82,50,632/-, we find no substance in the same. Although, the assessee had as per his computation of income claimed to have incurred expenditure towards the improvement of the subject lands, viz. (i) Financial Year 2001-02: Rs.39,20,100/-; and (ii). Financial Year 2002-03: Rs.15,80,000/-, but he had failed to place on record any material that would substantiate his aforesaid claim for deduction. As the assessee had raised the aforesaid claim based on the notings in his rough note book, therefore, the authorities below had declined to consider the same while computing the capital gain.

33. We have thoughtfully considered the observations of the CIT(A) and find no infirmity in the same. Ostensibly, in the absence of any material based on which the authenticity of the aforesaid claim of the assessee of having incurred the subject expenditure

towards the improvement of subject lands could be established, the authorities below could not have allowed the same. We thus, uphold the order of the CIT(A) on the aforesaid issue.

34. In the result, the appeal filed by the assessee is partly allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the Open Court on 2nd June, 2025.

Sd/- **(श्री मधुसूदन सावडिया)** **(MADHUSUDAN SAWDIA)** **लेखा सदस्य/ACCOUNTANT MEMBER**	Sd/- **(श्री रवीश सूद)** **(RAVISH SOOD)** **न्यायिक सदस्य/JUDICIAL MEMBER**

Hyderabad, dated 02.06.2025.
TYNM/sps

आदेशकी प्रतिलिपि अग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	Krishna Kishore Reddy Manyam, No.8-2, F:702 Sarita Apartments, Road No.4, Banjara Hills, Hyderabad – 500034. C/o.B. Narsing Rao & Co., Chartered Accountants, Plot No.554, Road No.92, Jubilee Hills, Hyderabad. – 500 096.
2.	राजस्व/ The Revenue	:	The Income Tax Officer, Ward –6(4), Hyderabad.
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER