

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI A.K.GARODIA, AM (SMC)**

**ITA No.182(B)/2014  
(Assessment years : 2005-06)**

Late Pobbati Ramachandraiah Setty,  
Rep. by Legal heir Sri P.R. Srinath and others,  
Srinath Building, Sultanpet,  
Bangalore -560 053  
**PAN No.ASZPS5387B**

Appellant

**Vs**

The Income Tax Officer,  
Ward-3(2),  
Bangalore

Respondent

**Assessee by : Shri V. Srinivasan, Advocate  
Revenue by : Shri V. Sreenivasan, JCIT**

**Date of hearing : 07-06-2016  
Date of pronouncement : . 06.2016**

**ORDER**

**PER SHRI A.K.GARODIA, AM:**

This is assessee's appeal directed against the order of ld. CIT(A),-II, Bangalore dated 02-12-2013 for the assessment year 2005-06.

2. The assessee has raised the following grounds:

“1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in passing the appellate order in the name of the deceased appellant and consequently, the impugned order passed deserves to be cancelled.

3. Without prejudice to the above, the learned CIT[A] is not justified in upholding in computing the taxable Long term Capital Gains of Rs. 20,51,0121- on the sale of agricultural lands under the facts and in the circumstances of the appellant's case.

3.1. The learned CIT[A] failed to appreciate that the agricultural lands sold by the appellant were not capital assets as they were situated beyond 8 kms from the municipal limits of Bangalore and hence the computation of Long term Capital Gains was opposed to law and liable to be vacated.

3.2. The learned CIT[A] further failed to appreciate that the conversion of the agricultural lands was only to facilitate the sale of the property and therefore there was no justification to hold that the appellant had sold non-agricultural lands and thus, the conclusion reached by the learned A.O. is unjustified and liable to be vacated.

3.3. Without prejudice to the above, the Long-term capital gain computed by the learned A.O. is highly excessive and is liable to be reduced substantially.

4. Without prejudice to the right to seek waiver with the Hon'ble CCIT *IDG*, the appellant denies himself liable to be charged to interest *uls* 234-A and 234-B of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. It was submitted by the learned AR of the assessee that only one issue is involved in this appeal whether the income arising on the sale of property in question is taxable as LTCG or not. He submitted that although the property in dispute was converted from agricultural land to non-agricultural land but even after that, actual agricultural operations were carried on till the date of sale and he submitted that under these facts, property in dispute has to be accepted as agricultural land and as a consequence, it is not a capital asset and therefore, the profit on sale of this property is not liable to be tax as capital gain tax. In support of his contention, he place reliance on the Tribunal's order rendered in the case of Shri M.R.Seetharam Vs ACIT in ITA No.1654/Bang/2013 dated 113-06-2014. He

submitted a copy of this Tribunal's order and drawn my attention to para-5 on page-4 of the Tribunal's order and pointed out that in that case also, the land was already converted as non-agricultural land before the date of sale and was sold as converted land and the land was purchased by company and as per the Karnataka Land Reforms Act, no company was permitted to purchase agricultural land which confirms that the land was in fact non-agricultural land. Thereafter, he has drawn my attention to page 32 of the Tribunal's order and in particular my attention was drawn to para-7.3 and it was submitted that it was held by the Tribunal in this case that the assessee had continued the agricultural operations unabated in the subject property on the date of sale even though the said land was converted for non-agricultural purposes by a conversion order of the State Government with a rider that the land should be used for the purpose for which the conversion was granted within two years from the date of issue of the said order but on the date of sale, the subject land was under active cultivation for agricultural purposes only. Finally, he has drawn my attention to para 7.3.10 of the Tribunal order wherein it was held by the Tribunal that this land should have been treated as agricultural land and thus, exempt from capital gains in view of sec.2(14) of the IT Act, 1961.

4. As against this, ld. DR of the revenue supported the order of the lower authorities below. He also submitted that this aspect has to be examined as to whether actual agricultural operations were actually carried out or not till the date of sale of the land in question as is being claimed. He also submitted that this aspect also needs examination whether the land in question is situated within 8 KMs of the Municipal area or not.

5. I have considered the rival submissions and find that although this Tribunal order is relevant in the present case but whether the assessee would get any benefit from this Tribunal's order or not depends upon the facts as to whether he assessee has carried out agricultural operations or not till the date of sale of land in question and mere this fact alone that agricultural income has been declared by the assessee in the return of income and the same was accepted by the department, it can be concluded that actual agricultural operations were carried out. Hence, I feel that this matter should go back to the file of the AO for fresh decision. Accordingly, I set aside the order of the ld. CIT(A) and restore the matter back to the file of the AO for a fresh decision with a direction that the assessee should bring evidence on record to establish its claim that actual agricultural operations were carried out by the assessee on this land till the date of sale of this land. The AO should also examine as to whether the land is situated within 8 KMs of the Municipal limit or not and thereafter, he should pass necessary orders as per law after considering this Tribunal's order rendered in the case of Shri M.R.Seetharam Vs ACIT (Supra). Needless to say that the AO should provide adequate opportunity of being heard to the assessee.

In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on the date mentioned in caption page.

**(A.K.GARODIA)**  
**ACCOUNTANT MEMBER**

D a t e d : .06.2016  
Place: Bangalore  
**am\***

**Copy to :**

- 1 Appellant
- 2 Respondent
- 3 CIT(A) Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order  
AR, ITAT, Bangalore

1.	Date of Dictation .....
2.	Date on which the typed draft is placed before the dictating Member .....
3.	Date on which the approved draft comes to the Sr. P. S. ....
4	Date on which the order is placed before the dictating Member for pronouncement .....
5.	Date on which the order comes back to the Sr. P.S. ....
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11	The date on which the file goes to the Assistant Registrar for signature on the order.....
12	The date on which the file goes to the dispatch section for dispatch of the Tribunal order.....
13	Date of dispatch of order.....

