IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Date of Decision: 28.02.2013

ITA No.104 of 2009

The Commissioner of Income Tax, Panchkula …Appellant

Versus

Smt. Rani Tara Devi …Respondent

ITA No.105 of 2009

The Commissioner of Income Tax, Panchkula …Appellant

Versus

Smt. Shakuntla Devi …Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Yogesh Putney, Advocate,
for the appellant.

Ms. Radhika Suri, Advocate,
for the respondent.

HEMANT GUPTA, J.

This order shall dispose of afore-mentioned Income Tax Appeals filed by the Revenue under Section 260A of the Income Tax Act, 1961 in respect of Assessment Year 2004-05 arising out of an order passed by the Income Tax Appellate Tribunal, Chandigarh Bench (A), Chandigarh (for short 'the Tribunal') on 28.08.2008.

After hearing learned counsel for the parties, the following substantial question of law arises for consideration:

"1. Whether on the facts and the additional information made available to this Court and in the circumstances of

> this case, the land acquired is not an agricultural land and, therefore, compensation shall be assessed in the year of receipt and not as and when the matter is finally resolved?"

The said question of law arises out of the fact that the land of the assessee, the subject matter of present assessment, was intended to be acquired by way of a notification dated 04.05.1995 issued under Section 4 of the Land Acquisition Act, 1894. The said notification was in respect of land measuring 184 acres in Village Jhuriwala and around 30.47 acres in Village Bana Madanpur. The land of the assessee in these two Villages namely Bana Madanpur and Jhuriwala measures 36 Kanal 6 Marla and 149 Kanal 2 Marlas respectively. The assessee received compensation on account of acquisition of land. The Assessing Officer assessed interest on the said compensation as taxable in the year under consideration. Such order was set aside by the Commissioner of Income Tax (Appeals) by holding that since the litigation in respect of compensation is pending finalization, therefore, the amount of interest is not taxable in the hands of the assessee. The said order of the Commissioner of Income Tax (Appeals) was upheld by the Tribunal. Still aggrieved, the Revenue is in appeals under Section 260A of the Act.

During the Assessment Year 2003-04, the Revenue had raised the following substantial questions of law in Income Tax Appeal No.955 of 2008:

> "1. Whether on the basis and in the circumstances of the case, the Hon'ble ITAT was right in canceling the order of the Commissioner of Income Tax u/s 263 to bring to tax an enhanced compensation of Rs.1,41,59,163/- by ignoring the provisions of

Section 45(5) of the I.T.Act, 1961 and also the fact that the compensation is received and retained in A.Y. 2003-04?

2. Whether the Hon'ble ITAT was right in holding that provisions under Section 45(5)(c) and 155(16) are not applicable with retrospective effect for the A.Y. 2003-04 and are contrary to the ratio laid down by the Hon'ble Supreme Court in 224 ITR 677 in Allied Motors (P) Ltd.?"

This Court in its order dated 27.10.2010 while considering the above said questions of law, relied upon the judgment of Hon'ble Supreme Court in **Commissioner of Income Tax Vs. Ghanshyam (HUF) (2009) 315 ITR 1** to hold that irrespective of the fact whether litigation with regard to award of compensation had attained finality or not, in terms of amended Section 45(5)(b), the taxability of income shall be in the year of receipt. Thus the appeal of the assessee was dismissed as the Question No.1 was answered in favour of the Revenue and the matter remanded to the Tribunal to pass an order in accordance with law.

The said order of this Court was challenged by the assessee before the Hon'ble Supreme Court. An argument was raised before the Hon'ble Supreme Court on 03.01.2012 that the judgment in **Ghanshyam's** case (supra) is not applicable to these cases, as the land in question is an agricultural land. The Hon'ble Supreme Court directed the Tribunal to give finding on such question. Vide a detailed opinion dated 07.06.2012, the Tribunal returned a finding that the land was not agricultural. Thereafter, the matter came up for final hearing before the Hon'ble Supreme Court on 07.12.2012, when the Special Leave Petition was dismissed with the following observations:

"The special leave petitions are dismissed.

> We, however, clarify that we have not expressed any opinion on the correctness for otherwise of the report submitted by the Income Tax Appellate Tribunal in terms of order dated 3rd January, 2012."

Learned counsel for the Revenue has vehemently argued that in view of the findings recorded by the Tribunal in respect of the previous year that the land is not agricultural land, therefore, in view of the judgment of this Court in the assessee's own case for the Assessment Year 2003-04, the taxability of event shall be the year of receipt. Therefore, the orders passed by the Commissioner of Income Tax (Appeals) and the Tribunal are not sustainable, as the question of law already decided in favour of the revenue.

On the other hand, Ms. Suri vehemently argued that the opinion of the Tribunal was not accepted by the Hon'ble Supreme Court, therefore, such opinion cannot be taken into consideration for returning a finding, whether the land acquired is an agricultural land or not. It is argued that the opinion of the Tribunal is based upon an order passed by this court in Income Tax Appeal No.276 of 2004 titled "Commissioner of Income Tax, Chandigarh Vs. Smt. Anjana Sehgal" decided on 01.03.2011, wherein an erroneous finding was returned that prior to constitution of Municipality of Panchkula on 25.01.2001, there was a Notified Area Committee. Therefore, neither the judgment of this Court in Anjana Sehgal's case (supra) nor the opinion of the Tribunal are relevant to determine; whether the land is agricultural or not on the date of notification under Section 4 of the Land Acquisition Act, 1894.

We have heard learned counsel for the parties at length on the question; as to whether land acquired is agricultural land or a

capital asset within the meaning of Section 2(14) of the Act. We find that the assessee is taking contradictory stand in the proceedings before this Court in the tax matter and in proceedings claiming enhancement of compensation. A perusal of the opinion of the Tribunal shows that identical affidavits were filed by both the assessee. A perusal of the affidavit dated 09.02.2012 filed by Smt. Rani Shakuntala Devi discloses that earlier there was a notification dated 26.06.1989 under Section 4 of the Land Acquisition Act by which part of the land owned by the assessee situated in Villages Bana Madanpur and Jhuriwala was acquired for which the Land Acquisition Collector announced Award No.5 dated 17.06.1992. Thereafter, around 184 acres of land was acquired in Village Jhuriwala and 30.47 acres of land was acquired in village Bana Madanpur in pursuance of notification dated 04.05.1995 for which Award No.6 dated 09.03.1998 was announced by the Land Acquisition Collector, the acquisition in question.

In a reference sought by the assessee under Section 18 of the Land Acquisition Act, 1894 before the learned District Judge, the Reference Court determined the market value of the land at the rate of Rs.5,60,000/- per acre vide Award dated 05.04.2002. The appeals filed by the land-owners including RFA No.2574 of 2002 filed by Tara Devi was allowed by this Court on 27.10.2006 and the matter remitted back to the Reference Court for re-determination of the market value. After such remand, the Reference Court vide Award dated 20.04.2009 determined compensation at the rate of Rs.746/- per square yard. Against the said Award, the State as well as the land-owners is in appeals. RFA No.3532 of 2009 and RFA No 3533 of 2009 filed by the

land-owner – the present assessee are pending decision before this Court.

We have called for the record of the aforesaid appeals preferred by the assessee as well as the State and heard learned counsel for the parties in respect of finding recorded by the reference court, subject matter of appeal. The learned counsel for the assessee has not disputed the pendency of appeal or the decisions referred to above. A perusal of the orders by the Reference Court shows that all the references under Section 18 of the Land Acquisition Act, 1894 including the references of the present assesses were consolidated with the main reference of "Lokinder Singh & others Vs. State of Haryana & another". The land-owners have examined as many as 13 witnesses and proved documents Exs.P1 to P76. PW-3 Ram Niwas, Draftsman, has proved the plan Ex.P18; certified copies of *Aks Shazras* Ex.P19 to Ex.P22 and the site plan of Panchkula (Part) Ex.P23 depicting the acquired land and its surroundings showing important locations and NH-73 on which the acquired land is situated apart from location plan of Panchkula as Ex.24. As per his statement, the plans were prepared by taking Majri Chowk i.e. District Headquarter Chowk, Panchkula situated on the interception of NH-73 and NH-22 as the zero point. The plan reflects approximate distances of the important locations from the said zero point. The acquired land was said to be about 1 Km from the said zero point. After considering the entire evidence, the learned Reference Court recorded the following finding:

> "24. The land owners in support of their case produced thirteen witnesses and also relied upon various documents. From the oral and documentary evidence led on the file and keeping in mind the guidelines and relevant laws applicable to the facts and

circumstances of the present case, all the ingredients and guidelines required for adjudication of the case have been taken care of. This has come in evidence that Majri Chowk/Dist. HQ Chowk is central point and important location of Panchkula. And as per the aforementioned guidelines, it is duly proved that the acquired land is situated around 1 Km from majri Chowk/District HQ Chowk, Panchkula. HuDA had already developed Sectors 24 to 28, Urban Estate, Panchkula vide acquisition on 26.06.1989 and plots in Sector 25, Urban Estate, Panchkula i.e. on the acquired land of Bana Madanpur and Jhuriwala were floated vide brochure Ex.P16 at the tentative rate of Rs.974/- per square meter and plots were also allotted in January, 1994. It is also duly proved on the file that village Kundli i.e. Sector 20, Panchkula is around 5 Km from Majri Chowk/District HQ Chowk, Panchkula, whereas the acquired land was only around 1 Km from the said place. It is also established on the file that HUDA has developed Sector 28, Panchkula much prior to the acquisition, the outer boundary of which is 7 ½ Km from Majri Chowk, Panchkula, whereas the acquired land falls in between developed sectors 24 to 28, Panchkula on one side and sectors 21, 3 on the other side. It is also established on the file that the land in question abuts the National Highway 73 which connects Sectors 1 to 21 with Sectors 24 to 30. On this road, first lies the acquired land and then sectors 24 to 28, which are beyond the acquired land from Panchkula. The acquired land is situated in Panchkula city and in an extensively developed area amidst developed sectors on NH 73. Sector 28 was already developed and it extended around 5 Km beyond the acquired land. It is also proved that the acquired land is only around 1 Km from Government College, Saket Hospital, District Headquarters/Mini Secretariat, General Hospital, Panchkula is only 3 Km away. School, Colleges, hospital, university, banks, market, bus stand, railway station and airport are also nearer from the acquired land than from Sectors 24 to 28, Urban Estate, Panchkula. Even Chandigarh is nearer from the acquired land than the aforementioned sectors. It is also proved that Sector 25, Urban Estate, Panchkula was already developed and abuts the acquired land. Infact, the same khasra number i.e. 4 min of Jhuriwala and part of Rectangle No.12 of Bana Madanpur were already developed into Sector 25, Panchkula and the remaining land from the same khasra no./rectangle no. are acquired vide the present acquisition. The acquired land is contiguous and similar in nature and quality to the land of already developed sector 25. It is also proved that Hotel

North Park is opposite the acquired land followed by Police Line, ITBP residential colony, Madanpur Cooperative House Building Society i.e. an approved posh residential colony with the name of the Tribune Mittar Vihar is almost opposite the acquired land. Fun City, Amusement park, BRS Dental College and Heart Institute are also near the acquired land and beyond from Majri Chowk. The Tribune Mittar Vihar, ITBP colony and electricity sub-station have already been developed in Bana Madanpur. The development upto 5 Km beyond the acquired land had already taken place and plots had already been allotted in Sectors 25 and 26, Urban Estate, Panchkula (i.e. Jhuriwala and Bana Madanpur) depicting the market value in the vicinity of the acquired land. The plots in Sector 25 were offered for allotment in Dec. 1992 and allotted in January 1994 and plots in Sector 26, were offered for allotment in December, 1993 and allotted in February 1995 which is proved by Ex.P23, Ex.P24, Ex.P17 and Ex.P9. Sectors 3 and 21 are adjacent to the acquired land, Golf Course, Olympic Bhawan, Sport Complex have been developed in Devi Nagar adjoining to the land of Jhuriwala. Major portion of Panchkula has developed after 1990 and about 1461 acres of land in Bana Madanpur, Jhuriwala, Ramgarh, Moginand, Nada, Kundi, Devi Nagar, Maheshpur, Fatehpur, Rally have been acquired and developed into Sectors 20, 21, 24, 25, 26, 27, 28 Urban Estate, Panchkula prior to the present acquisition in the vicinity of the acquired land and on the Eastern – Southern side of National Highway 22. These seven sectors out of a total of 28 sectors constitute1/4 of the 28 sectors developed by HUDA and the acquired land is situated in between these sectors….."

In the grounds of appeal before this Court, the appellants have averred to the following effect:

"3. That the land in dispute comprises of lands of village Jhuriwala and Bana Madan Pur in District Panchkula. It is situated in a location which possessed strong potentiality, for development for urbanization, residential, commercial and institutional purposes at Panchkula, one of the most important city of Haryana, at the time of issuance of Notification u/s 4 of the Act.

4. That the Learned Addl. District Judge, Panchkula rightly held that it has come in evidence that the Head Quarter of District Panchkula is located at Majri Chowk and is very

important location of Panchkula; it is proved by the appellant that the acquired land is situated around one kilometer from Majri Chowk the Head Quarter of the District Panchkula, Haryana Urban Development Authority (HUDA) had already developed Sector 24 to 28 Urban Estate Panchkula on the land acquired vide Notification under Section 4 of the Act dated 26.06.1989, Sector 25 Panchkula is located on the land of village Bana Madenpur and Jhuriwala acquired vide notification u/s 4 of the Act dated 26.06.1989, the sale of residential plots carved out in Sector 25 (on the land of Village Bana Madanpur and Jhuriwala) was floated vide brochure Ex.P-16 at a tentative rate of RS.974/- per sq. meter and these plots were allotted in January, 1994, Village Kundi i.e. Sector 20, Panchkula is around 5 k.m. from Majri Chowk/District Head Quarter of Panchkula; whereas the acquired land is only around 1 km from the Majri Chowk/District Head Quarter, Panchkula; HUDA Developed, Sector 28, Panchkula, much prior to the issuance of the present notification u/s 4 of the Act on 04.05.1995; the outer boundary of Sector 28, Panchkula is 7½ km from the Majri Chowk, Panchkula whereas the land in dispute falls in between the developed Sectors 24 to Sector 28 Panchkula on one side and Sector 21 and Sector 3, Panchkula on the other side……

5. That the learned Additional District Judge has rightly held that it is also established on the file that the land in question abuts the National Highway 73 which connects Sectors 1 to 21, Panchkula with Sectors 24 to 28, Panchkula which are beyond the acquired land from Panchkula; the acquired land is situated in Panchkula city and in an extensively developed area amidst developed sectors on NH-73; Sector 28 was already developed and it extended around 5 km beyond the acquired land; that the acquired land is only around 1 km from Government College, Saket Hospital, District Headquarters/ Mini Secretariat, General Hospital Panchkula is only 3 km away; schools, colleges, hospital, University, Banks, Market, Bus Stand, Railway Station and Air Port are also nearer from the acquired land than from Sector 24 to 28, Urban Estate, Panchkula; even Chandigarh is nearer from the acquired land than the afore mentioned sectors, …..”

A perusal of the evidence led by the assesses before the Reference Court shows that the land for developing Sector 24 to 28 was acquired vide notification dated 26.06.1989, which included the land of the assessee. The plots in Sector 25, Panchkula, i.e. the land of the assessee earlier acquired were allotted in June 1994 at the tentative price of Rs.974/- per square meter by Haryana Urban Development Authority. The outer boundary of Sector 28, Panchkula, which was acquired in the year 1989 is 7 ½ Km from Majri Chowk, Panchkula, whereas the acquired land is situated between the developed sectors i.e. Sectors 24 to 28 on the one side and Sectors 21 and 3 on the other side and is 1 km. from the District Headquarters. The land in question abuts National Highway 73 and that the acquired land is extensively developed area and is near to Government College, Saket Hospital, District Headquarters/Mini Secretariat, General Hospital, Panchkula than Sectors 24 to 28, Panchkula for which land was acquired in the year 1989. Thus, the land acquired in 1995 was an urban land in close proximity with District Headquarter and much closer to the District Headquarter than the land of the assessee itself acquired in the year 1989.

With the above factual back ground, the argument of learned counsel for the assessee is required to be examined. It is argued that in terms of Section 2 (14) of the Income Tax Act, 1961, an agricultural land is excluded from the capital asset, if it is not a land situated in an area, which is comprised within the jurisdiction of Municipality (whether known as Municipality, Municipal Corporation, Notified Area Committee, Town Area Committee or "*by other name"*). The said provision read as under:

> "2(14). "Capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include –
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> (iii) agricultural land in India, not being land situate—
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> (*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 according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or
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> (*b*) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (*a*), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette;
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> xx xx"

Sub Clause (b) of Section 2(14) of the Act contemplates that Central Government may specify the distance of not more than 8 Km from the local limits of Municipality to be excluded from agricultural land. It is in terms of the said provision; the Central Government has published a notification dated 06.01.1994 contemplating that the area up to a distance of 5 Km from the municipal limits of Panchkula in all directions shall not be an agricultural land.

Learned counsel for the assessee has vehemently argued that the Municipal Council Panchkula was constituted for the first time vide notification dated 25.01.2001 and there was no Municipality or Notified Area Committee constituted for Panchkula prior to the said date. The argument is that there was no Municipality of Panchkula in

the year 1994, therefore, the said notification in respect of land within 5 Km of Panchkula Municipality is vague, ineffective and cannot be made basis for determining the nature of land in question. The notification constituted Municipal Council was published only on 25.01.2001, therefore, the notification of the Central Government cannot be taken into consideration for determining the nature of the land acquired vide notification issued in the year 1995. Therefore, the land acquired for development of Panchkula has been wrongly treated to be capital asset in Anjana Sehgal's case (supra) and that the said judgment does not lay down correct law for returning a finding that the land acquired is not a capital asset. Learned counsel for the assessee has referred to the judgments of Hon'ble Supreme Court in **Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-Charge (Court of Wards), Paigah (1976) 105 ITR 133** and **Commissioner of Income Tax Vs. Gemini Pictures Circuit Private Ltd. (1996) 220 ITR 43** as well as judgments of Bombay High Court and Kerala High Court in **Commissioner of Wealth-Tax, Poona Vs. H.V. Mungale (1984) 145 ITR 208** and **Commissioner of Income Tax Vs. Murali Lodge (1992) 194 ITR 125** respectively.

In fact, the area of Municipal Corporation, Panchkula (earlier Municipal Council) was part of Kalka Tehsil of erstwhile Ambala District. Panchkula Tehsil was created in October, 1989, when 77 villages of Kalka Tehsil and 96 villages of Naraingarh Tehsil were transferred to it. Out of 96 villages, 4 villages were fully merged in Panchkula Urban Estate, an area developed by Haryana Urban Development Authority. The entire development of Panchkula Urban

Estate is by Haryana Urban Development Authority, as a satellite town of Chandigarh.

From the perusal of the affidavits filed by the assessee in proceedings relating to the previous assessment year, the part of the land owned by the assessee was acquired in the year 1989 i.e. for development of Sectors 24 to 28, Panchkula. Sector 28 is at a distance of seven and half kilometers from the District Headquarter i.e. Majri Chowk, which has been treated as a zero point by the assessee themselves in the matter pertaining to determination of compensation. The land acquired, the present subject matter, is at a distance of 1 Km from such zero point. In land acquisition cases, the assessee have projected that the land has a potential for being developed as a residential and commercial area located in close proximity of developed Panchkula city.

The 'Municipality' as defined in clause (e) of Article 243P of the Constitution means an institution of self-government constituted under Article 243Q. Article 243Q provides for the constitution of the municipalities provided it may not be constituted in such urban area or part thereof as the Governor may having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit to be a Municipality.

Haryana Urban Development Authority is a local authority in terms of Section 3 of the Haryana Urban Development Authority Act, 1977. Such authority has been established to promote and secure the development of all or, any of the areas comprised in an *'urban area'* and for that purpose the Authority shall have the power

to acquire by way of purchase, transfer, exchange or gift, held, manage, plan, develop and mortgage or otherwise dispose of land and other property to carry on by itself or through any agency. The relevant Sections i.e. Section 3 in respect of establishment and constitution of authority and Section 13 in respect of objects and functions of the Authority of the said Act read as under:

> "**3. Establishment and constitution of authority** – (1) With effect from such date as the State Government may, by notification, specify in this behalf, the State Government shall establish, for the purposes of this Act, an Authority to be known as the Haryana Urban Development Authority with headquarters at such place as the State Government may specify.
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> (2) The Authority shall be a body corporate as well as a local authority by the name aforesaid having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract; and shell, by the said name, sue and be sued.
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> (3) The Authority shall consist of a Chairman, a Vice-Chairman, a Chief Administrator and such other members, not more than twelve and not less than six, as the State Government may, from time to time, by notification appoint."
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> "**13. Objects and functions of Authority** – The objects of the Authority shall be to promote and secure development of all or any or the areas comprised in an urban area and for that purpose, the Authority shall have the power to acquire by way of purchase, transfer, exchange or gift, hold, manage, plan, develop and mortgage or otherwise dispose of land and other property, to carry out by itself or through any agency on its behalf, building, engineering, mining and other operations, to execute works in connection with supply of water treatment and disposal of sewage, sullage and storm water control of pollution and any other services and amenities and generally to do anything, with the prior approval, or on direction, of the State Government, for carrying out the purposes of this Act."

The Haryana Urban Development Authority is a corporate body, which has a right to hold, acquire, dispose of property or frame

schemes there under. It has been authorized to develop property, make plots, allot plots, carve out zones in planning, construct plots and delegate its authority of construction to other agencies. The Supreme Court in **Union of India & others Vs. R.C.Jain & others AIR 1981 SC 951** examined the question whether Delhi Development Authority (DDA) is a local authority within the meaning of Section 3 (31) of the General Clauses Act, 1897. Section 3 (31) reads as under:

> "3 (31) "local authority" shall mean a municipal committee, district board, body of port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;"

The Supreme Court held that such an authority to be local authority must have separate legal existence as corporate body. It must not be a mere governmental agency, but must be legally independent entities. The Court held that DDA is empowered to levy betterment charges on the owners of the properties and the arrears of betterment charges can be recovered as arrears of land revenue. There is an element of popular representation in the constitution of DDA and the functions of the DDA are more akin and similar to the functions of the Municipality including the power of zonalisation prescribed the use to which each zone is to be put, demolition of constructions made contrary to zoning regulations. Though in the aforesaid case, the DDA was found to a local authority though there was no specific provision declaring the DDA to be as local authority in the Statute. But in the case of Haryana Urban Development Authority, Section 3 of the Haryana Urban Development Authority Act itself declares Haryana Urban Development Authority to be a local authority. Still further,

such authority is a separate corporate entity. Though the members of the Authority are not elected, but they are non official members as well in terms of Section 3 of the Act. The functions and duties of the Haryana Urban Development Authority are akin to a Municipal Committee. The development is carried out by authority in an urban area alone, which is to be developed by such authority is a Municipality and would fall within the expression known 'by any other name'. The local authority in terms of Section 3 (31) of the General Clauses Act means a Municipality. Therefore, conversely, the expression 'Municipality' in Section 2 (14) of the Act would include a local authority.

The expression 'Municipality' in Section 2(14) of the Act is very wide. It is not restricted to a Municipality constituted under the relevant Municipal Laws such as Haryana Municipal Act, but it would include any other area known by any other name. Sub-clause (a) of clause (iii) of Section 2 (14) deals with an area which falls within the jurisdiction of a Municipality, whereas clause (b) enable the Central Government to declare an area situated within 8 kms from the local limits of any Municipality referred to in clause (a) to notify having regard to extent and scope for urbanization of that area. The notification dated 06.01.1994 takes into its ambit an area within 5 kms of the Municipality in the expression 'capital asset'. Therefore, the urban area developed by the Authority forms part of a Municipality.

In Anjana Sehgal's case (supra), the Court has taken into consideration the notification dated 06.01.1994 specifying the area of 5 Km outside the local limits of municipalities and cantonments in all directions as the Municipal Area for the purposes of the Act. In the

aforesaid case, the land in question was situated in State of Punjab, but within 5 kms of Municipality. It was held that if land is adjacent to a municipality, it is an urban land covered by Section 2 (14), even if the Municipality and the land fall in different States, the land will continue to be urban land.

In **Officer-in-Charge (Court of Wards), Paigah** case (supra), the Supreme Court has not approved the Full Bench judgment of Andhra Pradesh High Court in Officer-in-Charge (Courts of Wards) Vs. CWT (1969) 72 ITR 552 giving wide connotation as was possible to give to the words 'agricultural land'. The Court did not approve the said wide interpretation and observed inter alia to the following effect:

> "We think that it is not correct to give as wide a meaning as possible to terms used in a statute simply because the statute does not define an expression. The correct rule is that we have to endeavour to find out the exact sense in which the words have been used in a particular context. We are entitled to look at the statute as a whole and give an interpretation in consonance with the purposes of the statute and what logically follows from the terms used. We are to avoid absurd results. If we were to give the widest possible connotation to the words 'agricultural land', as the Full Bench of the Andhra Pradesh High Court seemed inclined to give to the term 'agricultural land', we would reach the conclusion that practically, all land, even that covered by buildings, is 'agricultural land' inasmuch as its potential or possible use could be agricultural. The object of the Wealth-Tax Act is to tax surplus wealth. It is clear that all land is not excluded from the definition of assets. It is only 'agricultural land' which could be exempted. Therefore, it is imperative to get reasonable limits to the scope of the 'agricultural land', or, in other words, this exemption had to be necessarily given a more restricted meaning than the very wide ambit given to it by the Full Bench of the Andhra Pradesh High Court.
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> For the reasons already given, we do not think that the term 'agricultural land' had such a wide scope as the Full Bench appears to have given it for the purposes of the Act we have before us. We

> agree that the determination of the character of land, according to the purpose for which it is meant or set apart and can be used, is a matter which ought to be determined on the facts of each particular case. What is really required to be shown is the connection with an agricultural purpose and user and not the mere possibility of user of land, by some possible future owner or possessor, for an agricultural purpose. It is not the mere potentiality, which will only affect its valuation as part of 'assets', but its actual condition and intended user which has to be seen for purposes of exemption from wealth-tax….."

However, in the aforesaid case, the Court was examining the definition of an 'asset' as contained in the Wealth-Tax Act, which expression excludes agricultural land. The aforesaid judgment deals with an 'asset' as to when the same can be treated to be an agricultural land. That was not a case of a land falling within the Municipality. The nature of land whether it is agriculture or not is not relevant if the land is within municipal limits. Any land would be capital asset within meaning of item (a) of clause (iii) of Section 2(14) of the Act. The location of land within municipal limits is the yardstick to determine the nature of an asset. The said judgment, therefore, does not advance the argument raised by the assessee. But as per the said judgment, the objects of the incorporation of an Act are to be taken into consideration. An agricultural land falling within Items (a) & (b) of sub-clause (iii) of Section 2 (14) of the Act would be outside the ambit of agricultural income. This is so held by the Supreme Court in **Singhai Rakesh Kumar Vs. Union of India & others (2001) 1 SCC 364**, when it was held to the following effect:

> "9. The position, as a result, is that income arising from the transfer of agricultural land that falls within the terms of Items (a) and (b) of sub-clause (iii) of clause (14) of Section 2 falls outside the ambit of revenue derived from land and therefore, outside the ambit of

> "agricultural income". Such income, therefore, is liable to capital gains tax chargeable under Section 45 of the 1961 Act."

Reliance of the learned counsel for the appellant on the Division Bench judgment of Kerala High Court in **Murali Lodge's** case (supra), wherein the land was situated within Guruvayur township constituted under the Guruvayur Township Act. With respect, we have reservation about the findings recorded. The Court has held that Guruvayur township can be a local authority, but all local authorities cannot be called Municipalities. It observed as under:

> "….May be that the Guruvayur township can be called a local authority, but all local authorities cannot be called municipalities. Only those local authorities which have all the trappings of a municipality can be treated as a municipality within the meaning of the section. Therefore, to find a solution to the problematic dispute, we have to give a meaning to the word "municipality" which stands undefined in the Act. Generally understood, 'municipality' means a legally incorporated or duly authorized association of inhabitants of a limited area for local governmental or other public purposes. (Black's Law Dictionary). The above definition more or less is reflected in the provisions contained in Chapter III of the Kerala Municipalities Act, 1960. The council constituted under Section 7 with the assistance of the standing committee of the council, chairman, commissioner, etc. will administer the provisions of the Act. The council consists of such number of members as are prescribed. They are called councilors. They are elected by the residents of the area coming within the jurisdiction of the municipality. The chairman and vice-chairman of the municipality are elected by the members of the council. The commissioner is appointed by the Government in consultation with the council. It is the duty of the commissioner to carry into effect the resolutions of the council unless it be that the said resolution is suspended or cancelled by the Government…."

Considering the expression 'Municipality' as defined in Black's Law Dictionary, the Court observed that the tests were; the administration of the provisions o the Kerala Municipalities Act, 1960

was vested with the standing committee consisting of chairman and commissioner etc. Such members are elected by the residents of the area. The Chairman and vice-chairman of the municipality are elected by the members of the council. The Commissioner is appointed by the Government in consultation with the council. The Court observed as under:

> "….The municipality contemplated under Section 2(14)(iii)(a) must be one which satisfies the above requirements. All the local authorities included in a brackets must satisfy the above requirements to be known as a 'municipality'. The position, however, would have been different had the section contained a definition which takes in its fold the local authorities included in the brackets, namely, "municipal corporation, notified area committee, town area committee, town committee or such other similar local authority". In that event, the Guruvayur Township can be said to be a municipality. The plain language employed in the section, however, makes it clear that the intention of the Legislature is not to treat every local authority as a municipality; but, on the other hand, only those local authorities which have all the trappings of a municipality as stated above, can be said to be municipalities within the meaning of the section."

With respect, we are unable to agree with the view expressed by the Kerala High Court in the aforesaid judgment. The expression 'by any other name' appearing in Item (a) of clause (iii) of Section 2 (14) has to be read ejusdem generis with the earlier expressions i.e. municipal corporation, notified area committee, town area committee, town committee. The Court has also not considered the scope and ambit of Section 3 (31) of the General Clauses Act defining local authority.

The judgment of Bombay High Court in **H.V. Mungale's** case (supra) again deals with the provisions of Wealth Tax Act so as to determine; whether the asset is an agricultural asset or not. The

expression 'Municipality' will include a local authority was not the question raised or decided.

In view of the above discussion, we hold that the land, subject matter of acquisition, is a capital asset falling within the scope of clause (iii) of Section 2 (14) of the Act.

Consequently, the question of law is answered in favour of the Revenue and against the assessee. The appeal stands disposed of accordingly.

(HEMANT GUPTA)
JUDGE

28.02.2013 **(RITU BAHRI)**
Vimal **JUDGE**