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आयकरअपीलीयअधिकरण,'ए" न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A"BENCH, CHENNAI

श्रीचंद्रपूजारी, लेखा सदस्य एवंश्रीधुव्वुरुआर.एलरेड्डी,न्यायिकसदस्यकेसमक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER AND
SHRI DUVVURU R.L. REDDY, JUDICIAL MEMBER

आयकर अपील सं./**ITA No.1560/Mds/2015**

निर्धारण वर्ष **/**Assessment Year : 2011-12

The Assistant Commissioner of Income Tax Corporate Circle 4(1) Chennai.	v.	M/s. Mansi Finance Chennai Ltd, No.22. Mansi Mansion, Mulla Saheb Street, Sowcarpet, Chennai 600 079. (PAN No.AAACM 5326N)
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. A.B. Koli, IRS, JCIT.

प्रत्यर्थीकीओरसे/Respondent by : Shri. T. Banusekar, C.A.

सुनवाईकीतारीख/Date of Hearing : 13.10.2015

घोषणाकीतारीख/Date of Pronouncement : 20.11.2015

आदेश /O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by the Revenue is directed against the order of the Commissioner of Income-tax (Appeals)-8, dated 25.03.2015 for the assessment year 2011-12.

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02. The grievance of the Revenue in this appeal is with regard to allowing the claim of the assessee that the land sold was agricultural land and profit on sale of land was not liable for tax.

03. The facts of the case are that the Assessing Officer while framing the assessment noticed that the assessee shown the agricultural income on sale of agricultural land situated at No.55,Thandalam Village, Sriperumbudur Taluk, at ₹3,79,99,376/. The Assessing Officer called for information u/s.133(6) from the Tahsildar, Sri Perumpudur Taluk vide this office letter dated 31.12.2013 and as per the letter No.R.C.No.1097/2013 B1 received on 12.03.2014 from Tahsildar stated that the above land are not cultivated for the past 8 years. Consequent to this, the Assessing Officer called for the comments of the assessee on this report. The assessee submitted as under:-

> *1. As per Main Object and Ancillary /incidental to attainment of main object is to money lending business and not dealing with Agricultural activities. As per Agreement for sale, dated 03.07.2008 with M/s.Rajalakshmi Education Services Pvt Ltd, it was mentioned only as "Land" and not Agricultural land. Chitta Patta Adangal produced. In "pasali", it was mentioned as "uzhavu" in the column for nature of crop. Purpose of buying Agricultural land was not explained nor reflected in MOA.*
>
> *The assessee admitted Net Agricultural income at Rs.8,03,730/- for which breakup of Gross receipt, expenditure made with bills/vouchers for sowing, ploughing, seeding, etc., and*

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harvesting the crops cultivated and sold.

2. *At the time of purchase, it was mentioned in the sale deed as "Land or vacant Land". The assessee's claim of profit on sale of Agricultural land by carrying agricultural activity is contrary to the MOA of the company.*

3. *The assessee company is registered as NBFC with RBI to carry out money business and not agricultural operation.*

4. *As per the assessee's reply dated 16.08.2013, the assessee's nature of business is financial business. So, the agricultural activity is not permitted in the main object ancillary/ incidental objects by the MOA.*

5. *The agricultural land was classified under the head "Land and Building" in the fixed asset Schedule of the Balance sheet.*

6. *The land in question shown as fixed asset in fixed asset schedule is ,the Capital asset under the provisions of Section 2(14) of the Act.*

7. *The assessee has not filed evidence for Income and Expenditure from Agricultural operation as called for vide this office letter dated 20.08.2013.*

8. *As per POA by Nahar to one of the Clause specifies to plot out of the lands.*

9. *In the ledger account itself, Mls Rajalakshmi Engineering College was mentioned at the time of purchase.*

10. *To find out land situates from Tahsildar Certificate from Municipal unit.*

11. *The buyers's, M/s.Rajalakshmi Engineering College purchased for construction of building to run Engineering College.*

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However, the Assessing Officer not agreeing with the contention of the assessee's counsel brought the gain on sale of the land as long term capital gain. Against this, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

04. The Commissioner of Income Tax (Appeals) observed that the AO has nowhere disputed that as per revenue records the impugned lands were classified as agricultural land, Besides as per the certification of the VAO of Thandalam village, the said lands were cultivable or in other words fit for cultivation, which again has not been questioned by the AO. Further, the AO has also not disputed the fact that the assessee had given the land on lease to Shri. D. David wherein as per the lease deed, the lands were only to be use for agricultural purposes. Further still, the Assessing Officer has also not disputed the fact or questioned that the agricultural income disclosed by the assessee during the AYs 2009-10 and 2010-11 which is immediately prior to the sale of the impugned lands in the AY 2010-11 which illustrates that the impugned lands were indeed cultivated. As regards the contention of the AO that the appellant's claim of profit on sale of agricultural lands was contrary to the MOA of the assessee company, there is merit in the AR's contention that

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as a non-banking financing company, the assessee was entitled to purchase or deal with any property in whichever way it deemed fit for the purpose of making investments and there was no limitation or restriction on the nature of assets that the company could hold as investment which fact becomes clear from the following clauses in the Memorandum of Association of the assessee company:

Under objects incidental or ancillary to the attainment of the main objects:

> *"12. To invest and deal with the money of the company not immediately required in such manner and upon such security or without security at all as the company may from time to time think fit"*
>
> *Under other objects:*
>
> *"8. To invest the funds of the company in any manner as the company may think fit and/without prejudice to the said generally*
>
> *a. In the purchase of lands and buildings, or any interest therein or on ground rents or where else in the world."*
>
> *"13. To develop and turn to account any land acquired by the company or in which it is interested, and in particular by laying out and preparing the same for building purposes, constructing, pulling down decorating, maintaining, furnishing, fitting up and improving buildings and by planting, paving, draining, farming, cultivating, letting on building lease or building agreement and by advancing money to and entering into contracts and arrangement of all kind with builders, tenants and others. "*

Therefore, evidently there was no constraint even as per

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the MOA, on the assessee to invest in agricultural lands and engage in agricultural activities and earn income thereby as the same was very much covered by the above referred clauses of MOA of the assessee company and therefore the AO's argument that the sale of the impugned lands was contrary to the MOA is also not factually borne out from the relevant documentation as cited above. The AR's reliance on the jurisdictional High Court in the case of M.S. Srinivasa Naicker vs. ITO (2007) 292 ITR 481(Mad) to buttress his point that the intention of the buyer, in this instant case, M/s. Rajalakshmi Education Services Pvt. Ltd. in purchasing the impugned property for the purpose of construction of Engineering College was irrelevant in determining the character of the impugned lands, is quite pertinent in the context of the present case, as undisputedly it was the intention of the assessee to earn income by way of agricultural activities which matters and it does not shed its character as agricultural land on the sale effected or even on the basis of use it is subsequently put to by the transferee, which in the case of the instant assessee's transferee was to build an Engineering college. The relevant part of the judgement supra is reproduced

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hereunder:-

> *''It is no doubt true that the purpose for which the purchaser had purchased was totally different from what the transferor had intended to use the land in question but with the admitted finding that the lands in question were under the agricultural operation on the date of sale for the purpose of considering the meaning or capital assets, it matters very little how the subsequent purchaser intended the land in question to be put to use. In the circumstances, there is no reason to accept the plea of the Revenue that the asset in question is a capital asset and it attracts levy of capital gains tax, it having shed its character as an agricultural land on the sale effected. In the absence of any contra indication that the assessee was using if or intending to use it for non-agricultural purposes, it is difficult to accept the stand of the Department.*

Therefore correlating the ratio of the above jurisdictional High Court judgement to the facts of the instant assessee, it was submitted that the intention of the purchaser of the land from the assessee was not really relevant in determining whether the impugned land was agricultural land or capital asset in the hands of the assessee. Further, the Commissioner of Income Tax (Appeals) observed that the instant assessee purchased lands in 2005-06 spread over 64 survey Nos. in Thandalam Village, Sriperumbudur Taluk classified in the revenue records as "wet agricultural land" as certified by the jurisdictional Tahsildar and VAO extracts which is reproduced at para 7 of the assessment order. The VAO had also certified vide certificate dated 18.11.09

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that it was also fit for cultivation. Secondly as seen from the records furnished at the time of appellate hearing that the' said lands were given on lease with specification that the said lands were to be used only for agricultural purpose which it was indeed used for and also the assessee had shown lease rentals received from the said agricultural lands as agricultural income in the relevant assessment years including the two AYs i.e. 2009-10 and 2010-11 immediately prior to the sale of the said lands in AY 2011-12 as mentioned aforesaid. The same has also not been disputed by the AO and nor has he doubted that the assessee had paid taxes for cultivating crops individually on the said agricultural lands to the State government as evidenced by the tax receipts acknowledged by the VAO which further indicates that the said lands were indeed put to use for agricultural purposes, albeit not by the assessee directly but by the lessee, which Is a normal practice adopted in large parts of the country including Tamil Nadu, by absentee landlords which the assessee in the instant case is. Thirdly there is also no dispute that the impugned lands was not converted into non-agricultural land prior to the sale and therefore it retained its character as agricultural land till the time of the sale. Fourthly it is also not

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disputed that the impugned lands were not situated as per limbs (a) and (b) of Section 2(14)(iii) of the Act. i.e. within the jurisdiction of a municipality or a cantonment board having population of not less than ten thousand or in an area not being more than eight kilometers from the local municipality / cantonment board limits. The Commissioner of Income Tax (Appeals) relied on the judgment in the case of *Sakunthala Vedhachalam Vs Vanitha Manickavasagam [2014] 90 CCH 0038 (Mad*) relied on by the AR. wherein the Madras High Court held that the assessee cannot be denied exemption from capital gains tax, once it has been accepted by revenue authorities that the classification of land as per the revenue records was Agricultural lands and it satisfied other conditions of of limbs (a) & (b) of Section 2(14)(iii) of the Act. In the said case, the Madras High Court concluded that the Tribunal was not justified in rejecting the exemption and reasoned as follows:

> *"Once the Tribunal had accepted that the classification of lands as per the revenue records were agricultural lands, which are evidenced by the adangal and the letter of the Tahsildar and satisfied other conditions of' Section* 2(14) of *the Income Tax Act, the court is* of *the view that the Tribunal had misdirected itself* as *stated above. "*

Apart from the rebuttals by the AR to the *AO's* reasoning for treating the impugned properties as capital assets and its

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sale of long term capital gains in the foregoing paragraphs which has considerable merit, the four undisputed facts obtained in the case as discussed immediately above as also the ratio off the jurisdictional court cited supra is persuasive enough in treating the impugned properties as agricultural lands and therefore, the profits of its sale as profits derived by the transfer of agricultural lands and not of capital assets as held *by* the *AO.* The AO is therefore directed to treat the sale of impugned lands as sale of agricultural lands, exempt from tax and allowed the claim of the assessee. Further, he also treated the agricultural land as lease rent of ₹8,03,730/- as income from agriculture as against claim of the Assessing Officer as income from other sources. Against this, the Revenue is in appeal before us.

05. The ld. Departmental Representative submitted that Tahsildar reported that lands in question was not used for agricultural purposes for the last eight years i.e from 2005 and filed objection with proof on 21.03.2014. When it is put to the assessee by Assessing Officer he has no response. The lease agreement in question is a device to claim such deduction which is an afterthought. The Revenue Tahsildar is a competent authority to report whether the agricultural operations are carried

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on the lands. The lands in question is not agricultural land at the time of sale as reported by the competent authority, the Revenue Tahsildar and hence the lands are treated as capital assets u/s.2(14) of the Income Tax Act, 1961 and the Long Term Capital Gains on sale of land is brought to tax u/s.45 and also agricultural income is treated as income from other sources. The Departmental Representative further submitted that Commissioner of Income Tax (Appeals) failed to appreciate that no agricultural operations were carried out in the sold land for 8 years prior to the sale as confirmed by the Tahsildhar of Sriperumbudur and the statement of the VAO, who where competent authority in this regard. The Commissioner of Income Tax (Appeals) also failed to appreciate that the land was shown in schedule to the balance sheet in the fixed assets and as such should be treated as capital asset. The Departmental Representative further submitted that the Commissioner of Income Tax (Appeals) failed to appreciate that the assessee has not given any evidence during the assessment proceedings to prove that agricultural operations were actually carried out in the sold land and finally he also relied on the order of the Assessing Officer.

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06. On the other hand, the ld. Authorised Representative submitted that till the assessee sold the land, agricultural operations, in fact, were carried out by the assessee. The assessing authority, in its order, stated that the land was actually under cultivation till the date of sale. A perusal of Sec.45 shows that the requirement as on the date of sale of transfer is that the asset must be capital asset, considering the description under the Act. The chargeability to tax under Sec.45 arises only if on the date of sale, the land in question retained its character as a capital asset, which means, an asset, which does not answer the definition of a capital asset and which is an agricultural land would automatically be outside the scope of sec.45. It is no doubt that the purpose for which the purchaser had purchased was totally different from what the transferor had intended to use the land in question but with the admitted finding that the lands in questions were under agricultural operation on the date of sale for the purpose of considering the meaning of capital assets, it matters very little how the subsequent purchaser intended the land in question to the put to use. In the circumstances, there is no reason to accept the plea of the Revenue that the asset in question is a capital asset and attracts levy of capital gains tax, it having shed its character as an agricultural land on the sale effected. In the absence of any

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contra indication that the assessee was using it or intending to use it for non agricultural purposes, it is difficult to accept of the Department. Further, he submitted that the assessee cannot be denied exemption from capital gains tax once it has been accepted by Revenue authorities that the classification of lands as per the Revenue records was agricultural lands and it satisfies other conditions of Sec.2(14) of the Income Tax Act in this regard. The manner in which adjacent lands are used by the owner therein is not a ground to come to a conclusion that the assessee’s land are not agricultural in nature and further Authorised Representative relied on the judgments of jurisdictional High Court in the case of *M.S. Srinivasa Naicker vs. ITO 292 ITR 481 and Sakunthala Vedachalam vs. Vanitha Manickavasagam 369 ITR 558.*

07. We have heard both the parties and perused the material on record. It is an admitted fact that the land was held by the assessee as a capital asset from the date of purchase till the date of sale. There is no dispute on this aspect that it is evidenced by the entries reflected in the Balance Sheet of the assessee company. The assessee's contention is that it is intended to retain the agricultural land acquired as a capital asset. The assessee never treated the land as stock in trade. The assessee reflected the same in the Balance Sheet as a fixed asset.

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The assessee carried on agricultural operations though leasing the same to Shri. D.David. This agricultural land is situated beyond 08km from any municipal limits. The Assessee has not taken any permission from the Government for making plots, as the assessee company never had any intention to make the land into plots and carry on real estate business in respect of the land. Thus, the assessee never created an asset as stock in trade but treated it as capital asset (agricultural land). The assessee has sold said land in the assessment year. The same is reflected under the head fixed assets in the Balance Sheet as on 31.03.2010. Revenue records of the above said land is brought on record by the assessee to prove the fact that the land held/sold by the assessee is agricultural land.

7.1 The AR submitted that the sale transaction effected by the assessee in respect of the above agriculture land constituted only sale of agriculture land, and by no stretch of imagination it can be treated as adventure in trade and so as to treat the same as 'business transaction' for the following reasons:

(i)		Purchase and holding of land for a period and subsequent sale thereof itself cannot be an indicator to hold that the intention of the assessee was to carry on business with those assets. The intention cannot be presumed unless supported by evidence. In this case the treatment given by the assessee for this asset in the account books clearly indicate that the intention of the assessee is to hold the same as capital asset

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		to have good returns from the same.
(ii)		The assessee held land for considerable time. The asset acquired was agriculture land as per the evidence brought on record. Thus, the assessee held the agriculture land for more than 3 years. During that period the assessee carried on regular agricultural operations in the land by leasing for agricultural purpose. In the light of favourable market conditions the assessee thought it good to sell the asset to realize a good amount. Realization of better price in a booming market cannot be considered as an adventure in trade
(iii)		The expression adventure in the nature of trade occurs in the definition of business under section 2(13) but the expression adventure in the nature of trade has not been defined in the Act. It may be pertinent to mention here that a specific transaction partake the character of business or an adventure in the nature of trade or realization of capital asset or a mere conversion of asset has to be decided depending upon facts of each case.
(iv)		In deciding as to whether a particular transaction is an adventure in the nature of trade, the Assessing Officer must consider all the relevant and proved facts and circumstances. Realization of investments consisting of purchase of agricultural land and resale, though profitable are clearly outside the domain of adventure in the nature of trade.
(v)		The assessee treated the assets as investment in agricultural land. Therefore disposal of the same would not convert, what was a capital accretion, to an adventure in the nature of trade. To make it more clear, sale of agricultural land by the assessee and realisation of good price would not alter the basic nature and characteristic of the transaction. In the case of the assessee, land was acquired by the assessee and reflected in the balance-sheets of the concern as fixed-assets.

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		The assessee never treated the land as stock-in-trade and reflected in profit and loss account (closing stock). There was no element of trade attached to the activity of the assessee in purchase and sale of the land. A continuous business requires more activity and greater organization. This is absent in the transaction of sale of land by the assessee. Therefore, although there is profit in the transaction the transaction cannot be characterized as an adventure in the nature of trade.
(vi)		Whether a transaction in respect of an asset is capital or business income being adventure in the nature of trade depends on the facts and circumstances of the case. There are many factors like frequency of transactions, period of holding, intention for resale etc, which determine whether the gain arising of a transaction is in the process of realisation of investment or in the course of business. The mere fact that the person has purchased a land and subsequently sold it, giving rise to a substantial profit cannot change the character of the transaction. It is the general human tendency to earn profit out of capital asset. No one invests to incur a loss. If the market condition suddenly goes up or down, it is always the tendency of a person to take a quick decision so that the realization on the investment is maximum or the loss is minimum.
(vii)		As already mentioned the assessee company carried on regular agricultural operations in the said agriculture land by leasing to Shri. D. David.
(viii)		By leasing the above agriculture land the assessee earned agriculture income which were brought into the account books of the assessee. Such income was offered to income tax.

7.2 From the above, it is clear that:

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(a)		The assessee purchased agriculture land now under consideration situated beyond 8 km from the municipal limits.
(b)		The assessee treated the same as fixed asset in their books along with other agriculture land which was already acquired by them in the earlier years.
(c)		The land was identified as agriculture land in the revenue records.
(d)		The assessee carried on routine agriculture operations through Shri. D. David and the land was used for agriculture operations.
(e)		The assessee did not carry on any commercial activity with reference to that land such as getting of approval for converting into sites, plotting of the same into sites etc. Thus, the character of the land i.e., agriculture nature was continuing till the same was sold by the assessee company.
(f)		Because of favourable market conditions the assessee sold the land and the same fetched them a good price.

7.3 Therefore, in the present case there is no dispute that the assessees acquired agricultural land. There is also no dispute that there was agricultural operation in this land before sale of this land.

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7.4 The Assessing Officer was of the opinion that the amount received on sale of this agricultural property is nothing but on account of adventure in the nature of trade and the same was brought into income from business. In this case, the assessee held the land always as investment and not at all converted into stock-in-trade. The character of the land in the hands of the assessees has not changed. There is no material on record to show that the assessee carried on activities of buying and selling of land in a systematic manner so as to justify the action of the AO in treating the activities of the assessee as adventure in the nature of trade. The land was sold by the assessees in acreage and not by making plots.

7.5 Now the question as to whether a land is agricultural land or not is essentially a question of fact. The question has to be answered in each case having regard to the facts and circumstances of that case. There may be factors both for and against a particular point of view. We have to answer the question on a consideration of all of them, a process of evaluation and the inference has to be drawn on a cumulative consideration of all the relevant facts. It may be stated here that not all the factors or tests would be present or absent in any case and that

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in each case one or more of the factors may make appearance and that ultimate decision will have to be reached on a balanced consideration of the totality of the circumstances.

7.6 The expression 'agricultural land' is not defined in the Act, and now, whether it is agricultural land or not has to be determined by using the tests or methods laid down by the Courts from time to time.

7.7 The Supreme Court in the case of *Smt. Sarifabibi Mohmed Ibrahim v. CIT [1993] 204 ITR 631/70 Taxman 301* has approved the decision of a Division Bench of the Gujarat High Court in the case of *Siddharth J. Desai (supra*) and has laid down 13 tests or factors which are required to be considered and upon consideration of which, the question whether the land is an agricultural land or not has to be decided or answered. We reproduce the said 13 tests as follows:

"1.		Whether the land was classified in the Revenue records as agricultural and whether it was subject to the payment of land revenue?
2.		Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time?

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3.		Whether such user of the land was for a long period or whether it was of a temporary character or by any of a stopgap arrangement?
4.		Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land?
5.		Whether, the permission under s. 65 of the Bombay Land Revenue Code was obtained for the non-agricultural use of the land? If so, when and by whom (the vendor or the vendee)? Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date?
6.		Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use? Whether such lesser and/or alternative user was of a permanent or temporary nature?
7.		Whether the land, though entered in Revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes?
8.		Whether the land was situated in a developed area? Whether its physical characteristics, surrounding situation and use of the land in the adjoining area were such as would indicate that the land was agricultural?
9.		Whether the land itself was developed by plotting and providing roads and other facilities?

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10.		Whether there were any previous sales of portions of the land for non-agricultural use?
11.		Whether permission under s. 63 of the Bombay Tenancy and Agricultural Land Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist? If so, whether the sale or intended sale to such non-agriculturists was for non-agricultural or agricultural user?
12.		Whether the land was sold on yardage or on acreage basis?
13.		Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?"

7.8 A reference could be made to the case of *CWT v. Officer-in-charge (Court of wards) [1976] 105 ITR 133(SC)* wherein the Constitution Bench of the Supreme Court stated that the term 'agriculture' and 'agricultural purpose' was not defined in the Indian IT Act and that we must necessarily fall back upon the general sense in which they have been understood in common parlance. The Supreme Court has observed that the term 'agriculture' is thus understood as comprising within its scope the basic as well as subsequent operations in the process of agriculture and raising on the land all products which have some

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utility either for someone or for trade and commerce. It will be seen that the term 'agriculture' receives a wider interpretation both in regard to its operation as well as the result of the same. Nevertheless there is present all throughout the basic idea that there must be at the bottom of its cultivation of the land in the sense of tilling of the land, sowing of the seeds, planting and similar work done on the land itself and this basic conception is essential sine qua non of any operation performed on the land constituting agricultural operation and if the basic operations are there, the rest of the operations found themselves upon the same, but if the basic operations are wanting, the subsequent operations do not acquire the characteristics of agricultural operations. The Constitution Bench of the Supreme Court in the aforesaid case observed that the entries in Revenue records were considered good prima facie evidence.

7.9 The Gujarat High Court in the case of *Dr. Motibhai D. Patel v. CIT [1981] 127 ITR 671/5 Taxman 147* referring to the Constitution Bench of the Supreme Court had stated that if agricultural operations are being carried on in the land in question at the time when the land is sold and further if the entries in the Revenue records show that the land in question is agricultural land,

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then, a presumption arises that the land is agricultural in character and unless that presumption is rebutted by evidence led by the Revenue, it must be held that the land was agricultural in character at the time when it was sold. The Division Bench of the Gujarat High Court further held that there was nothing on record to show that the presumption rose from the long user of the land for agricultural purpose and also the presumption arising from the entries of the Revenue records are rebutted.

7.10 The Bombay High Court in the case of *CWT v. H.V. Mungale [1984] 145 ITR 208/12 Taxman 201* held that the Supreme Court had pointed out that the entries raised only a rebuttable presumption and some evidence would, therefore, have to be led before taxing authorities on the question of intended user of the land under consideration before the presumption could be rebutted. The Court further held that the Supreme Court had clearly pointed out that the burden to rebut the presumption would be on the Revenue. The Bombay High Court held that the ratio of the decision of the Supreme Court was that what is to be determined is the character of the land according to the purpose for which it was meant or set apart and can be used. It is, therefore, obvious that the assessee had

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abundantly proved that the subject land sold by them was agricultural land not only as classified in the Revenue records, but also it was subjected to the payment of land revenue and that it was actually and ordinarily used for agricultural purpose at the relevant time.

7.11 We may also refer to the case of *CIT v. Manilal Somnath [1977] 106 ITR 917(Guj.),* wherein the Division Bench of the Gujarat High Court observed that the potential non- agricultural value of the land for which a purchaser may be prepared to pay a large price would not detract from its character as agricultural land on the relevant date of sale.

7.12 We may also refer to the case of *Gopal C. Sharma v. CIT [1994] 209 ITR 946/72 Taxman 353(Bom),* in which, the case of Smt. Sarifabibi Mohamed Ibrahim (supra) was referred to and relied, amongst other cases. In this case, the Division Bench of the Bombay High Court has stated that the profit motive of the assessee selling the land without anything more by itself can never be decisive for determination of the issue as to whether the transaction amounted to an adventure in the nature of trade. In

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other words, the price paid is not decisive to say whether the land is agricultural or not.

7.13 We may refer to a judgment of the Madras High Court in the case of CIT v. E. Udayakumar [2006] 284 ITR 511 where the Madras High Court has referred to the decision of the Punjab & Haryana High Court in the case of *CIT v. Smt. Savita Rani [2004] 270 ITR 40/[2003] 133 Taxman 712and* has observed and held as under :

> *"8. It is well settled in the case of CIT v. Smt. Savita Rani (2004) 186 CTR (P&H) 240: (2004) 270 ITR 40(P&H), wherein it is held that the land being located in a commercial area or the land having been partially utilised for non-agricultural purposes or that the vendees had also purchased it for non-agricultural purposes, were totally irrelevant consideration for the purposes of application of s. 54B.*
>
> *9. In the abovesaid case, the assessee an individual sold 15 karnals, 18 marlas of land out of her share in 23 karnals, 17 marlas land during the financial year 1990-91, relevant to the asst. yr. 1991-92, the sale was effected by three registered sale deeds. While filing her return of income, she claimed exemption from levy of capital gains under s. 54B of the Act on the ground that the land sold by her was agricultural land and the sale proceeds were invested in the purchase of agricultural land within two years. The AO rejected the claim of the assessee holding that the land sold by the assessee was not agricultural land and this was upheld by the CIT(A). On further appeal, the Tribunal accepted the claim of the assessee holding that the transaction in question duly fulfilled the conditions specified for relief. On further appeal to the High Court, the Punjab & Haryana High Court found that the finding that the land had been used for agricultural purposes was based on cogent and relevant material. The Revenue record supported the claim. Even the records of the IT Department showed that the assessee had declared agricultural income from this land in her returns for the preceding two years. The land being located in commercial*

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> *area or the land having been partially utilised for non-agricultural purposes or that the vendees had also purchased it for nonagricultural purposes, were totally irrelevant consideration for the purposes of application of s. 54B.*
>
> *10. It is seen from the aforesaid decision that the agricultural land sold by the assessee with an intent to purchase another land within two years had also been permitted to claim exemption under s. 54B of the IT Act, 1961. In the instant case, even though there was no sale as such, the assessee owned agricultural land within the limits of Tirunelveli Corporation and he had not put up any construction thereon, the assessee is entitled to claim exemption from the WT Act for the assessment of wealth-tax. That the land in question is adjacent to the hospital is totally irrelevant*."

7.14 Adverting to the facts of the present case, the land in question is classified in the Revenue records as agricultural land and there is no dispute regarding this issue and actual cultivation has been carried on this land by leasing the same to Shri.D. David and income was declared from this land in the return of income filed by the assessee for the earlier years as agricultural income. It is also an admitted fact that the AO has not brought on record any evidence to show that the agricultural land was used for non-agricultural purposes and the assessee has not put the land to any purposes other than agricultural purposes. It is also an admitted fact that neither the impugned property was subject to any developmental activities at the relevant point of time of sale of the land.

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7.15 Recently the Karnataka High Court in the case of CIT v. Madhukumar N. (HUF) [2012] 208 Taxman 394/23 taxmann.com 341held as follows:

> *"9. An agricultural land in India is not a capital asset but becomes a capital asset if it is the land located under Section 2(14)(iii)(a) & (b) of the Act, Section 2(14) (iii) (a) of the Act covers a situation where the subject agricultural land is located within the limits of municipal corporation, notified area committee, town area committee, town committee, or cantonment committee and which has a population of not less than 10,000.*
>
> *10. Section 2(14)(m)(b) of the Act covers the situation where the subject land is not only located within the distance of 8 kms from the local limits, which is covered by Clause (a) to section 2(14)(iii) of the Act, but also requires the fulfilment of the condition that the Central Government has issued a notification under this Clause for the purpose of including the area up to 8 kms, from the municipal limits, to render the land as a "Capital Asset.*
>
> *11. In the present case, it is not in dispute that the subject land is not located within the limits of Dasarahalli City Municipal Council therefore, Clause (a) to section 2(14][iii] of the Act is not attracted.*
>
> *12. However, though it is contended that it is located within 8 knits,, within the municipal limits of Dasarahalli City Municipal Council in the absence of any notification issued under Clause (b) to section 2(14)(iii) of the Act, it cannot be looked in as a capital asset within the meaning of Section 2(14)(iii)(b) of the Act also and therefore though the Tribunal may not have spelt out the reason as to why the subject land cannot be considered as a 'capital asset' be giving this very reason, we find the conclusion arrived at by the Tribunal is nevertheless the correct conclusion."*

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7.16 Further the word "Capital Asset" is defined in Section 2(14) to mean property of any kind held by an assessee, whether or not connected with his business or profession, but does not include "(iii) agricultural land in India, not being land situated

(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
(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, urbanization of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette;"

7.17 It is very clear from the above that the gain on sale of an agricultural land would be exigible to tax only when the land transferred is located within the jurisdiction of a municipality. The fact that all the expressions enlisted after the word municipality are placed within the brackets starting with the words 'whether known as' clearly indicates that such expressions are used to denote a municipality only, irrespective of the name by which such municipality is called. This fact is further substantiated by

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the provisions contained under clause (b) wherein it has been clearly provided that the authority referred to in clause (a) was only municipality.

7.18 From the facts and circumstances of the case, as narrated before us, it is important to note that what was the intention of the assessees at the time of acquiring the land or interval action by the assessee between the period from purchase and sale of the land and the relevant improvement/development taken place during this time is relevant for deciding the issue whether transaction was in the nature of trade. Though intention subsequently formed may be taken into account, it is the intention at the inception is crucial. One of the essential elements in an adventure of the trade is the intention to trade; that intention must be present at the time of purchase. The mere circumstances that a property is purchased in the hope that when sold later on it would leave a margin of profit, would not be sufficient to show, an intention to trade at the inception. In a case where the purchase has been made solely and exclusively with the intention to resell at a profit and the purchaser has no intention of holding the property for himself or otherwise enjoying or using it, the presence of such an intention is a relevant factor and unless it is offset by the presence of other factors it would raise as strong presumption that the transaction is an

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adventure in the nature of trade. Even so, the presumption is not conclusive and it is conceivable that, on considering all the facts and circumstances in the case, the court may, despite the said initial intention, be inclined to hold that the transaction was not an adventure in the nature of trade. The presumption may be rebutted. In the present case, considering the facts and circumstances of the case it cannot be considered as an adventure in the nature of trade. The intention of the assessee from the inception was to carry on agricultural operations and even there was no intention to sell the land in future at that point of time. It was due to the boom in real estate market came into picture at a later stage, the assessee has sold the land. Merely because of the fact that the land was sold for profit, it cannot be held that income arising from the sale of land was taxable as profit arising from the adventure in the nature of trade. The period of holding should not suggest that the activity was an adventure in the nature of trade.

7.19 Further, we make it clear that when the land which does not fall under the provisions of section 2(14)(iii) of the IT Act and an assessee who is engaged in agricultural operations in such agricultural land and also being specified as agricultural land in Revenue records, the land is not subjected to any conversion as non-agricultural land by the assessee or any other concerned

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person, transfers such agricultural land as it is and where it is basis, in such circumstances, in our opinion, such transfer like the case before us cannot be considered as a transfer of capital asset or the transaction relating to sale of land was not an adventure in the nature of trade so as to tax the income arising out of this transaction as business income. Accordingly, the ground raised by the Revenue is dismissed.

08. In the result, the appeal of the Revenue in ITA No.1560/Mds/2015 is dismissed.

Order pronounced on Friday, the 20th day of November, 2015 at Chennai.

Sd/-	Sd/-
(धुव्वुरुआर.एलरेड्डी)	**(चंद्रपूजारी)**
Duvvuru R.L. Reddy)	(Chandra Poojari)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 20th of November, 2015.
KV
आदेश की प्रतिलिपि अग्रेषित/Copy to:
1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.