**IN THE INCOME TAX APPELLATE TRIBUNAL**
**Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member**
*AND*
**Shri S.Rifaur Rahman, Accountant Member**

| | | |
|---|---|---|
| ITA No. 1997/Hyd/2017 | | |
| Assessment Year: 2013-14 | | |
| | | |
| J.K. Bros Constrafin Ltd<br>Hyderabad<br>PAN:AABCJ2139H | Vs. | Income Tax Officer,<br>Ward 2(1)<br>Hyderabad |
| (Appellant) | | (Respondent) |

| | |
|---|---|
| Assessee by: | Sri A.V. Raghuram |
| Revenue by: | Sri Phani Raju, DR |
| | |
| Date of hearing: | 21/08/2019 |
| Date of pronouncement: | 05/09/2019 |

**ORDER**

**Per Smt. P. Madhavi Devi, J.M.**

This is assessee's appeal for the A.Y 2013-14 against the order of the CIT (A)-2, Hyderabad, dated 20th October, 2017.

2. Brief facts of the case are that the assessee, a company engaged in the business of real estate and finance, filed its return of income for the A.Y 2013-14 on 26.09.2013 declaring a loss of Rs.13,36,965/-. During the assessment proceedings u/s 143(3) of the Act, the AO observed that the assessee has sold agricultural land admeasuring 43 acres and 29 guntas for a total consideration of Rs.54,65,625/- which was purchased during the financial year 2008-09 for Rs.13,29,610/-. He observed that the assessee has earned a profit of Rs.41,36,015/- on such sale and

has shown as income in the P&L A/c. But while computing the total income, the assessee has claimed deduction of Rs.41,36,015/- i.e. profit on sale of agricultural lands from the total income on the ground that it is on sale of agricultural land. He observed that in the Balance sheet, the agricultural land shown as fixed asset. On show cause letter issued agricultural income as to why the said income should not be brought to tax, the assessee vide letter dated 19.02.2016, stated that the said agricultural land is located in the District of Mahaboobnagar, which is a drought-prone area and therefore, the assessee company could not derive any agricultural income from the said agricultural lands. He further observed that the assessee has not used the sale proceeds of agricultural lands for any investment to be eligible to claim any deduction u/s 54 of the Act. With regard to the assessee's claim that it is agricultural land and therefore, it is not a capital asset and not includible as income, the AO agreed that the agricultural land is not capital asset but held that since the assessee has not utilized the proceeds from sale of agricultural land, it should be treated as assessee's business income. He accordingly brought the profit to tax.

3. Aggrieved, the assessee preferred an appeal before the CIT (A), who perused the balance sheet of the assessee as on 31.03.2013 and observed that the land was categorized as "land & site development" and that the assessee has not shown any revenue from the said land. He observed that the only revenue shown in the year under consideration was profit on sale of land amounting to Rs.41,36,015/-. He thus observed that the assessee has not carried out any business operations during the relevant A.Y and has also not incurred any expenditure in his business

operations. He, therefore, held that it is a capital asset liable for capital gains on transfer. He, therefore, computed the long term capital gain after allowing the cost of acquisition and the stamp duty and directed the AO to compute the capital gains accordingly. Against the order of the CIT (A), the assessee is in appeal before us by raising the following grounds of appeal:

> *"1. The order of the learned CIT (A) is erroneous both on facts and in law to the extent it is prejudicial to the interests of the assessee.*
>
> *2. The learned CIT (A) erred in holding that though the lands sold are capital asset they are not agricultural land and hence gains are taxable.*
>
> *3. The learned CIT (A) failed to appreciate that there is no such condition that there should be income from agricultural lands to hold them to be not a capital asset and thereby erred in directing to tax the gains on sale as capital gains.*
>
> *4. Any other ground that may be urged at the time of hearing".*

4. The learned Counsel for the assessee, while reiterating the submissions made before the authorities below submitted that the assessee had undisputedly purchased the agricultural land in acres and has also sold the land as agricultural land only. Since it was a drought-prone area, the assessee had not carried out any agricultural activity and had not derived any agricultural income therefrom. Therefore, he submitted that the land being agricultural land does not fall within the definition of capital asset. He submitted that the AO has accepted the land to be not a capital asset and has treated it as business income, whereas the CIT (A) has treated it as a capital asset and has directed the AO to compute the long-term capital gains therefrom. He placed reliance upon the decision of the Coordinate Bench of the Tribunal in the

case of Mr. Desham Satyanarayana vs. ITO in ITA No.1825/Hyd/2014, dated 20.01.2016 wherein it was held that where a property purchased and sold was agricultural land and there was no intention or evidence that the land was converted to non-agricultural land or put to use for non-agricultural purposes, then it cannot be considered as a capital asset u/s 2(14) of the Act. Therefore, he prayed that the order of the CIT (A) be set aside and the addition made by the AO be deleted.

5. The learned DR, on the other hand, supported the orders of the authorities below and also placed reliance upon the decision of the Hon'ble Kerala High Court in the case of Sreedhar Ashok Kumar vs. CIT reported in (2018) 89 taxmann.com 145 (Ker.) and the decision of the Coordinate Bench in the case of D.S. Karunakar Reddy vs. Dy. CIT in ITA Nos.752 to 757/Hyd/2011 dated 30.11.2011.

6. Having regard to the rival contentions and the material on record, we find that the only dispute is whether the land purchased by the assessee as agricultural land and also sold as agricultural land, is a capital asset u/s 2(14) of the Act, or and whether the income from such sale is business income or capital gains?. Admittedly, the assessee is a company which is engaged in the business of real estate and has apparently purchased the property for development of the same into plots as is evident from the Balance sheet of the company. If the assessee had carried on such activity and had derived income therefrom, it would definitely be business income, as held by the AO. However, the assessee has not carried on any agricultural activity nor has it

converted the said agricultural land into non-agricultural land and had not shown any intention of developing the same into plots. Undisputedly, the assessee has sold the land as it is i.e. in the same status of agricultural land to the vendee for a sale consideration in acres. Therefore, we agree with the contention of the assessee that the land did not loose its character of being agricultural land at the time of sale. Since the location of the land is beyond 8kms from the Municipal area, it did not become a capital asset u/s 2(14) of the I.T. Act. Further, the AO himself has held the land to be agricultural land and thus not a 'capital asset', but since the assessee was engaged in the business of real estate, he held the income from such sale of land to be business income. We find that the CIT (A), has held the land to be a capital asset only because the land was shown as a fixed asset in the balance sheet of the assessee. The decisions relied upon by the learned DR are distinguishable on facts. In the case of D.S. Karunakar Reddy (Supra), the assessee therein had purchased the agricultural land and had converted the same into plots and sold to various purposes. It is for this reason that the Tribunal had held that the intention of the assessee therein was to do business in the real estate. In the case of Sreedhar Ashok Kumar (Supra) also, it was held that mere classification of agricultural land by the Revenue authorities is not sufficient to hold that the land as agricultural land. However, the facts of the relevant case are not available in the order. Therefore, we are not in a position to understand the facts and circumstances under which the above observations have been made by the Tribunal. Hence, deem it fit and proper to grant the benefit of doubt to the assessee therein. Since the assessee before us has purchased the agricultural land and had sold it as agricultural land and there is no evidence brought on record that

the assessee has carried on any developmental activities on the said land and since the land was described by the Revenue authorities as agricultural land only, we accept the contention of the assessee and hold that the land, in question, is agricultural land and the profit therefrom is not taxable in the hands of the assessee either as business income or as capital gains. Appeal of the assessee is accordingly allowed.

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

Order pronounced in the Open Court on 5th Sept. 2019.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(S. RIFAUR RAHMAN)** | **(P. MADHAVI DEVI)** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

Hyderabad, dated 5th Sept. 2019.
***Vinodan/sps***

Copy to:

1 JK Bros Constrafin Ltd, C/o K.Vasanthakumar, A.V.Raghuram & P. Vinod, Adcoates, 610 Babukhan Estate, Basheerbagh, Hyderabad-1
2 ITO Ward 2(1) 5th Floor, Signaturre Towers, Kondapur, Hyderabad
3 CIT (A)-2 Hyderabad
4 Pr. CIT – 2 Hyderabad
5 The DR, ITAT Hyderabad
6 Guard File

*By Order*