

## **Land intended to be used for commercial purpose at time of sale can't be deemed as agricultural land**

**Summary – The Bangalore ITAT in a recent case of B. Sudhakar Pai, (the Assessee) held that Capital gains addition in respect of sale of various lands held by assessee an individual engaged in buying/selling of immovable properties was to be upheld as land was converted from agricultural to non-agricultural prior to sale with sole purpose and intent to sell land for industrial purpose and period of holding was also very short; land in question did not fall under exclusion clause (iii) to section 2(14)**

### **Facts**

- The assessee, a Chartered Accountant by profession, was engaged in buying and selling immovable properties. During relevant year, the assessee sold agricultural lands and claimed the same as exempt under section 2(14).
- During assessment, the Assessing Officer observed that the properties under sale were converted from agricultural land to non-agricultural lands for industrial use prior to its sale. Thus the Assessing Officer held such properties as capital asset under section 2(14) and brought to tax the long-term capital gain and short-term capital gain arising from the sale transaction of the lands in question.
- On appeal, the Commissioner (Appeals) accepted assessee's contention that lands in question were used for agricultural purposes till the date of sale and relying upon revenue records submitted by assessee deleted the addition made by the Assessing Officer.
- On appeal by revenue to the Tribunal:

### **Held**

- There is no dispute that the assessee is engaged in the activity of purchase and sale of immovable properties including agricultural lands. Even otherwise the assessee is a chartered accountant by profession and therefore, is not an agriculturist. During the year under consideration, the assessee sold various agricultural lands after conversion from agriculture to non-agricultural industrial use. From the details of the sales of properties and the date of conversion it is clear that the first lot of lands was purchased by the assessee on 13-5-2005 and thereafter converted from agriculture to non-agriculture industrial use on 10-7-2006, and immediately thereafter sold on 18-7-2006. The intention and purpose of purchase of the lands on 13-5-2005 is clear from its period of holding which is about one year and further the lands were converted from agriculture to non-agricultural industrial use just 8 days prior to the sale. Even otherwise, when the assessee is engaged in the purchase and sale of the agricultural lands then the intention and purpose of purchase of the agricultural land by the assessee can never be for carrying out the agricultural operations but it was only for resale of the same. While completing the assessment under section 143(3) the Assessing Officer had made additions on account of

- (i) long term capital gain and
  - (ii) short term capital gain
- The above addition clearly shows that the short-term capital was almost double the amount of long-term capital gain and therefore, the holding period of the lands was less than 3 years in majority of the cases. Further it was noted that the lands in question were sold in terms of the agreement of sale dated 1-4-2005. There was a condition under clause 3 of the agreement that the buyer would buy the property only if the seller would convert the property into non-agricultural *i.e.* industrial. There is no denial of the fact that the lands in question were got converted from agriculture to non-agricultural industrial use to satisfy the condition of the agreement for sale and therefore, the very intention of conversion was to sell the properties for non-agricultural use. The term capital asset has been defined under section 2(14), however, agricultural land has been excluded from the meaning of capital asset provided under section 2(14). The term 'agricultural land' is not defined under the Income-tax Act and therefore, in order to ascertain whether the land in question can be considered as agricultural land for the purpose of section 2(14), the criteria laid down by the judicial precedents of High Courts and Supreme Court are to be taken into account. The meaning of the expression 'agricultural land' was considered first time by the Supreme Court in case of *CIT v. Raja Binoy Kumar Sahas Roy* [\[1957\] 32 ITR 466](#). The constitution bench of Supreme Court has considered the meaning of the expression 'agricultural land' which was again considered by the Supreme Court in case of *Smt. Sarifabibi Mohmed Ibrahim v. CIT* [\[1993\] 204 ITR 631/70 Taxman 301](#). In the said case the Supreme Court has held that land is assessed to land revenue as an agricultural land, is not a conclusive fact and the question is to be decided by considering various factors including whether the land is used for cultivation and agricultural operations. The actual use and the intended use of land has to be seen for the purpose of exemption. The Supreme Court has also considered the decision of the Bombay High Court in case of *CIT v. V.A Trivedi* [\[1988\] 172 ITR 95/38 Taxman 102](#) in case of *Smt. Sarifabibi Mohmed Ibrahim (supra)*.
  - The criteria laid down by the Bombay High Court in case of *V.A. Trivedi (supra)* for ascertaining the true character and the nature of the land is that whether it has been put to use for agriculture purposes for a reasonable span of time prior to relevant date and that further, the land was intended to put to use for
  - The Supreme Court, while holding that the land was not an agricultural land had taken note of the fact that the assessee entered into an agreement to sell the land for housing purposes by applying and obtaining the permission to sell the land for non-agricultural purpose and its sale soon after.
  - In a subsequent decision in the case of *Gopal C. Sharma v. CIT* [\[1994\] 209 ITR 946/72 Taxman 353](#) the Bombay High Court has again considered this aspect of agricultural land and has observed that the fact that the land is sold or transferred to a non-agriculturist for a non-agricultural purposes or that it is likely to be used for non-agricultural purposes in the remote past or it continues to be

assessed to land revenue on the footing of agricultural land is not decisive. Thus, it is settled proposition of law that merely showing the land as agriculture in the land record and the use for agriculture purpose in remote past are not the decisive factors but the future use of the land for non-agricultural purpose would change the character of the land from agriculture to non-agricultural at the time of sale. The scheme and object of exempting agricultural land from the definition of capital asset is to encourage cultivation of land and agricultural operations. Therefore, for the purpose of granting exemption, a restricted meaning has to be given to the expression 'agricultural land' as contemplated under section 2(14)(iib). In the case in hand, the purchase and sale of land within a short span of period is not in dispute and further, the assessee got converted the land in question from agriculture to non-agricultural industrial purpose with the sole purpose and intent to sell the land for industrial purpose. When the land was already converted from agriculture to non-agricultural industrial use then merely it was wrongly shown in the revenue record as agricultural land would not change the actual fact of conversion from agriculture to non-agriculture purpose. Since the assessee has claimed to have some ancestral agricultural land which is not subject matter of the dispute in this case therefore, offering agriculture income and acceptance of the same would not change the character of the land in question at the time of sale. Considering the fact that the land in question were held by the assessee for a very short period of time and the intended future use is undisputedly for non-agriculture industrial purpose as the land was sold to the purchaser with the condition for non-agricultural use clearly established that the assessee did not intend to use the land in question for agriculture purpose in the past as well as in future. Applying the test as laid down by the various judgments of Supreme Court as well as High Court as discussed above, the land in question does not fall under the exclusion clause (iii) of section 2(14). Accordingly, the impugned order of the Commissioner (Appeals) is set aside and the order of the Assessing Officer is restored. In the result, the appeal of the revenue is allowed. agriculture purpose for a reasonable span of time in future.