

## Permanent cessation of agricultural operation would covert agricultural land into non-agricultural land: ITAT

**Summary – The Chennai ITAT in a recent case of Vijay Shah, (the Assessee) held that where in light of real estate development taking place in an area, there was a permanent stoppage of agricultural operation on lands for its economic utilisation, and such stoppage was not merely intermittent stoppage, character of agricultural land would naturally be converted into non-agricultural and gains arising on its sale would be liable to capital gains tax**

### Facts

- The assessee sold part of the land on 24-2-2012 which was owned by way of inheritance from their father who purchased the agricultural land on 5-7-1984. However, the assessee did not declare capital gains in its return of income.
- During the course of assessment proceedings, the assessee contended that the land sold was an agricultural land and falling beyond 8 kms from the municipal limit of Chennai Municipal Corporation; therefore, on sale of agricultural land no capital gain would arise and, hence, the same was not incorporated in the return of income.
- The Assessing Officer observed that there were no agricultural activity carried on. Further the Inspector's report showed that the land sold was at a distance of 7.2 kms from the limit of Municipal Corporation. He held that the agricultural land sold was a capital asset as per the Income-tax Act and, therefore, capital gains tax was leviable on sale of such asset. The Assessing Officer also considered the development charges as part of sale consideration and, accordingly, adopted the sale consideration of agricultural land at Rs. 16.66 crore and computed the taxable LTCG in the case of the assessee at Rs. 3.30 crore. The Assessing Officer allowed the deduction under section 54EC for Rs. 50 lakhs from the LTCG and assessed the taxable capital gain at Rs. 2.80 crore.
- On appeal, the Commissioner (Appeals) treated the land in question as agricultural land and observed that as per section 2(14)(iii), sale proceeds of agricultural land were exempt and addition was deleted.
- On appeal to the Tribunal:

### Held

- As laid down by various High Courts in different judgments, a series of tests are applied to decide, whether a land is agricultural or not. It is also to be understood that all these tests are in the nature of guidelines and have to be applied, depending upon the facts and circumstances of each case.
- In the present case, as already stated, the core of the arguments of the assessee is on the classification of the land in revenue records. But, that alone does not conclusively prove the nature of the land sold by the assessee, as other evidences are shadowing the said presumption *prima facie* created by the entry made in the revenue records. The properties were in fact, inherited by the assessee. At the time of purchase of these parcels of land, they might have been agricultural lands.

That is why the land parcels are classified in the revenue records as agricultural lands. That position was continued in a religious manner without any annual verification of the nature of the property. But, the character of the land sold by the assessee has been explained by the Tahsildar in unequivocal terms in his letter given under section 133(6) before the assessing authority. The Tahsildar has stated that not only for the impugned previous year but also for past 3 earlier previous years, no agricultural activities were carried out in that area. The assessee as well as the owners of surrounding properties was not in fact carrying on any agricultural activities. The letter given by the Tahsildar is very important. He has stated the reasons as to why the agricultural activities were not being carried out on those properties. Because of urbanization, the properties being in the peripheral of Chennai Metropolis, real estate development has started taking place in that area as well. A lot of private and commercial buildings are constructed. Because of the boom of the real estate development, the entire contingent of that land has become subject matter of transactions intended for the purpose of real estate development. In that background no agricultural activities were being carried out in that area. The case of the assessee is also not an exception.

- The letter given by the Tahsildar has categorically established the finding of the Assessing Officer that the lands sold by the assessee in the previous year relevant to the assessment year under appeal were not agricultural land. The past history of the land alone is not the deciding factor. Once upon a time the land might have been used for agricultural operations. In that way of speaking, almost all parts of Chennai Metropolis might be agricultural or marshy land in good old past. Therefore, history is not the only test to be applied to decide the character of the land at the time of sale. A temporary stoppage in the agricultural activities carried on by an assessee also should not go against an assessee. For one or other reason, an assessee may not be carrying on agricultural operations for one or two years, he might be carrying on agricultural operations for all the years in a consistent manner. In such cases, it is not possible to hold that non-carrying on agricultural operations for one or two years permanently changes the character of the land.
- But, here the case is still different. The assessee has not been carrying on agricultural operations for so many years continuously and consistently. It is not a case of intermittent stoppage of agricultural operations. It is a case of permanent stoppage of agricultural operations in the light of real estate development taking place in the particular area. Therefore, by virtue of not carrying on agricultural activities for a quiet long time in the past, the character of the land occupied by the assessee has been naturally converted into a non-agricultural land.

***Whether the assessee was carrying out agricultural operations or not***

- The case of the assessee in the present case is that even at the time of sale of these parcels of land, the assessee had been carrying on agricultural operation by way of growing Eucalyptus trees. The effect of cultivating these trees was considered by the Tribunal, Chennai 'B' Bench in the case of *Pallava Resorts (P.) Ltd.* IT Appeal No.794 (Mds.) 2011, dated 11-10-2012. In paragraph 22 of the said order, the Tribunal has held that cultivating casuarina plants for a short period of time does not

alter the basic character of the land. The land purchased by the assessee was not useful for carrying on any normal agricultural activities. Only plants like casuarina grown therein. For earning income from casuarina plants, the assessee need not purchase land by investing crores of rupees. Investment and return do not have any comparison. Even though the above observation of the Tribunal in the case of *Pallava Resorts (P.) Ltd. (supra)* is not exactly applicable to the present case, it shows, if circumstance so permits, the frivolousness of the arguments usually made by the assesseees that they have carried on agricultural activities by planting casuarina.

- In the context of agricultural operations, it is necessary to see that the agricultural operations carried on by the assessee must be activity of economic gain. It must generate meaningful income to the person who is carrying on agricultural activities. If the agricultural activities carried on by the assessee as a hobby or casual or incidental, it is very difficult to hold a view that the land is agricultural in nature. India is pre dominantly an agricultural economy where agricultural activities are major part of economic activities of our country. Therefore, the activities carried on by the assessee must be meaningful and result-oriented towards generating reasonable income from such operations. As far as the present case is concerned, there was no such economic utilization of the land for earning income by carrying on agricultural operations.
- The assessee had reported agricultural income in his returns of income for assessment year at Rs. 11,760/-. When this is considered, it is obvious that the agricultural income returned by the assessee was just for namesake and it was not the result of any agricultural operations carried on by the assessee, in an economic way. There was no economic utilization of land for the purpose of earning agricultural income. It cannot be ruled out that this was only a ploy carried out by the assessee to make an impression before the tax authorities that the assessee's land was agricultural in nature, so that the assessee can claim the benefit of agricultural land, when the lands are sold, in view of high demand of land in the area and in view of hectic activities of real estate development. Therefore, these small amounts of agricultural income returned by the assessee for few assessment year do not go to change the character of the land.
- In the facts and circumstances of the case, the land was not actually or ordinarily used for agricultural operations on or around the relevant time of sale. It is also to be seen that the income returned from agricultural operations carried on in the land was just for namesake and does not have any proportion to the efforts usually that would have been made by a true agriculturist. At the time of sale of land also no agricultural activities were carried on by the assessee.
- In these circumstances, the Assessing Officer has conclusively established that the lands sold by the assessee in the previous year relevant to the assessment year under appeal for a consideration of 11,66,00,000 were not agricultural in nature, but, on the other hand, they are non-agricultural land. Therefore, it definitely comes under the category of 'capital asset'. Accordingly, the gains arising out of transfer of that capital asset is exigible to capital gains tax.
- When the basic nature of the land itself found to be non-agricultural, the arguments regarding status of the property, whether within metropolis or outside the limit of the metropolis, is

irrelevant. A non-agricultural property, whether inside the municipality or outside the municipality or even in a remote village is a 'capital asset' and transfer of the same may generate income liable for capital gains taxation. In the facts and circumstances of the case, the order of the Commissioner (Appeals) is set aside on this point and restore the order of the Assessing Officer.