

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES “SMC”, HYDERABAD  
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER**

**I.T.A. No. 1543/HYD/2019**

Assessment Year: 2011-12

Smt.Mangavalli Grandhi, HYDERABAD [PAN: AEGPG6442L]	Vs	Income Tax Officer, Ward-6(2), HYDERABAD
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(Appellant)

(Respondent)

For Assessee : Shri A.V.Raghuram, AR  
For Revenue : Shri V.M.Mahidhar, DR

Date of Hearing : 23-02-2021  
Date of Pronouncement : 26-04-2021

**ORDER**

This assessee's appeal for AY.2011-12 arises from the CIT(A)-6, Hyderabad's order dated 05-06-2019 passed in case No.10683 / 2018-19 / B2 / CIT(A)-6, in proceedings u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. It transpires at the outset that this assessee's instant appeal suffers from 36 days delay stated to be attributable to the reason(s) beyond her control as per condonation petition/affidavit dt. 27-12-2019. No rebuttal has come from the departmental side. The impugned delay is condoned therefore.

3. The assessee has raised the following substantive grounds in the instant appeal:

*“1.The order of the learned CIT(A) dismissing the appeal and confirming assessing capital gains is not only erroneous both on facts and in law but in perverse.*

*2.The learned CIT(A) erred in upholding the validity of initiating proceedings u/s.147 though there is no escapement of income in this assessment year.*

*3.The learned CIT(A) erred in holding that capital gains arose in in this assessment year contrary to the provisions of Sec.2(47)(v) on a misconstrued fact of not giving possession.*

*4.The learned CIT(A) failed to appreciate that it is not mere wrong mentioning of section as 143(3) but making assessment by issue of notice u/s.143(2) without a valid return and there by erred in invoking Sec.292B to hold it is a curable defect instead of holding it to be invalid assessment.*

*5.The learned CIT(A) ought to have read the GPA with later sale Deed to verify about receipt of entire consideration and giving possession of the property and ought to have held that capital gains arose when GPA was executed.*

*6.The learned CIT(A) erred in holding that the property sold is a capital asset by referring to irrelevant decisions and holding it to be in a Municipality though it is only in a panchayat and continued to be an agricultural land at the time of GPA and also at the time of sale by GPA holder and thereby erred in holding that the transfer attract capital gains.*

*7.The learned CIT(A) failed to appreciate that only when a Municipality is named or called by any other name it could be considered as Municipality and not a Gram Panchayat which is otherwise distinguishable as Panchayat and thereby erred in holding the asset to be a capital asset though in a Panchayat”.*

4. Coming to the sole substantive issue of correctness of long term capital gain to the tune of Rs.14,70,858/- in light of Section 2(14) explanation 2(iii)(b), the CIT(A)'s detailed lower appellate discussion reads as under:

**“6.5.0 CHARACTERISTIC OF THE PROPERTY UNDER TRANSFER:**

**Ground No.5:**

*Without prejudice to the above, the AO failed to appreciate that the GPA itself show the land as wet land and further the area where land is situated is not falling U/s 2(14)(iii)(a) and erred in giving a finding that it falls under the said provision without any supporting material.*

*6.5.1 As seen from the above, as an alternative ground, it is contended by the assessee that the property under transfer is agricultural land inasmuch as the same is not situated in any area falling under the purview of section 2(14)(iii)(a) of the Act. In this regard, the assessee filed written submissions and the relevant portion of the same is reproduced below for ready reference:*

**"WHETHER THE ASSET TRANSFERRED IS A CAPITAL ASSET:**

*Without prejudice to the submissions and without accepting that there is transfer during the previous year giving raise to Capital Gains, the appellant submit that she has filed all the relevant documents including the copy of pahani to demonostrate that the land is a patta land and is wet land. The documents both GPA and the sale deed categorically stat that the lands are wet lands and are in Rajam Mandal of Srikakulam district and is not near any notified municipality as there is none in the vicinity. The AO instead of verifying this facts without having knowledge as to when a land would be shown as patta land and based on an enquiry conduct behind the back to the effect that it was leased out for storing scrap without verifying as to who give it for lease for such purpose had held the land to be a Capital asset. The recital in the sale deed is important and if it is not correct the SRO would not have allowed it to be registered. After sale the land might have given for lease and the verification did not state as to when the lease was given as the assessment is made during 2018-2019 and not in 2010-2011 or immediately. In the absence of providing such information to the appellant anti not narrating the contents of the enquiry report it is fallacious to hold an agricultural land to be non agricultural land. The appellant submit that the land transferred is not a Capital asset and is not assessable to Capital gains tax”.*

*6.5.2 I have carefully considered the alternate grounds of appeal and contentions of the assessee, and examined the same in the light of the facts and the circumstances of the case, as emanating from the assessment record, and documentary evidence placed on record.*

6.5.3 As seen from the assessment order, the AO has recorded clear finding of facts with regard to the nature of the property under transfer, and the relevant portion of the same is reproduced below for ready reference:

i) The assessee was specifically asked to prove that the land in question was not a capital asset and does not fall within the purview of the Section 2(14)(iii)(a), which she had failed to prove except with a general explanation.

ii) Further, as per the registered deed the land in question was situated in Rajam Nagara Panchayat limits which clearly falls within the area mentioned in the sub-section (iii)(a) of Section 2(14).

iii) The enquiry caused through the Inspector also revealed that the land in question is surrounded by residential plots and buildings and in fact the land is also reported to be leased out for a scrap dealer for using it as stock yard.

iv) On verification of the pattadar Adangal/pahani copy, the nature of the land was recorded its Patta for nature of land in column 6/7. This document only reflects, on whose name of the land was recorded as per Revenue Records. No evidence the land is an agricultural land was produced.

*(emphasis supplied)*

6.5.4 At this juncture, it is important to note that in the impugned sale deed dated 18.08.2010(supra), it is clearly stated that the property under transfer is situated within Rajam Nagar Panchayat limits implying that the property is situated in an area which is comprised within the jurisdiction of a Municipality as envisaged u/s.2(14)(a)(iii)(a) of the Act.

6.5.5 In this connection, it may be noted that the definition of Municipality includes Nagar Panchayat as defined in Article 243P(e) *rw* Article 243Q of the Constitution of India *rw* Explanation (ii) to sub-section (20) of section 10 of the Act. The relevant portion of the statute and Articles of the constitution of India are extracted below for ready reference:

section 10(20) of the Act:

" (20) the income of a local authority which is chargeable under the head [\* \* \*] "Income from house property", "Capital gains" or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service [(not

*being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area].*

*[Explanation. - For the purposes of this clause, the expression "local authority" means-*

- (i) Panchayat as referred to in clause (d) of article 243 of the constitution; or*
- (ii) Municipality as referred to in clause (e) of article 243P of the constitution; or*
- (iii) Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or*
- (iv) Cantonment Board as defined in section 358 of the Cantonments Act, 1924 (2 of 1924);}*

*Article 243P of the Constitution:*

*243P. Definitions In this Part, unless the context otherwise requires,*

- (a) Committee means a Committee constituted under article 243S;*
- (b) district means a district in a State;*
- (c) Metropolitan area means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be Metropolitan area for the purposes of this Part;*
- (d) Municipal area means the territorial area of a Municipality as is notified by the Governor;*
- (e) Municipality means an institution of self government constituted under Article 243Q;*
- (f) Panchayat means a Panchayat constituted under Article 243B;*
- (g) population means the population as ascertained at the last preceding census of which the relevant figures have been published*

*Article 243Q of the Constitution:*

*243Q. Constitution of Municipalities*

*(1) There shall be constituted in every State,*

- (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition [rom a rural area to an urban area*

*(b) a Municipal Council for a smaller urban area; and  
(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part: Provided that a Municipality under this clause 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, by public notification, specify to be an industrial township"*

*(emphasis supplied)*

*6.5.6 In this regard, it is not out of place to mention that in the case of Smt. T. Urmila Vs. ITO [2012] 28 taxmann.com 222 (Hyderabad – Trib.), Hon'ble jurisdictional ITAT, Hyderabad had an occasion to adjudicate the issue of definition of Municipality within the meaning of section 2(14)(a)(iii)(a) of the Act wherein it was held that for the purpose of section 2(14)(a)(iii)(a) of the Act, definition of Municipality as contained in Article 243Q of the Constitution of India should be applied. Accordingly, it was held that Nagar Panchayat constituted by the respective State Governments in terms of Article 243Q of the Constitution of India should come under the sweep of definition of Municipality as per the provisions of section 2(14)(a)(iii)(a) of the Act. The relevant portion of the judgment is reproduced below for ready reference:*

*"58. 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 situate-*

*(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;*

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

60. We find force in the argument of the AR that clarifying within the brackets in the section 2(14)(iii)(a) is for the apparent reason that the name of the local body varies based on the nature of the area for which it is constituted and also for the reason that there is a lack of uniformity all over India with reference to the nomenclature of the urban local authority. In fact, municipality is known by different names in various parts of the country. This fact is also evidence from Art.243Q of the Constitution of India, dealing with creation of municipalities. The term 'municipality' is not defined u/s.2(14) of the Act. However, the same is defined under article 243 P(e) of the Constitution of India, which is reproduced hereunder.

"243 p(e): "Municipality" means an institution of self-Government constituted under article 243Q. "

Since "Municipality" is defined to mean an institution constituted under Article 243Q, the same is extracted hereunder:

"243Q. Constitution of Municipalities.- (1) There shall be constituted in every State,"

(d) a Nagar Panchayat (by whatever name called) or a transitional area, that is to say, an area in transition from a rural area to an urban area;

(e) a Municipal Council for a smaller urban area, and

(f) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part." "

(emphasis supplied)

6.5.7 As seen from the above, it is clearly evident that Nagar Panchayat is also a Municipality within the meaning of u/s.2(14)(a)(iii)(a) or the Act. This fact was highlighted by the AO at

*point (ii) of the finding of the facts recorded in the assessment order (supra). At this juncture, it is pertinent to note that, in accordance with the provisions of the ANDHRA PRADESH MUNICIPALITIES ACT, 1965, Rajam Nagar Panchayat was constituted w.e.f 15.10.2005 i.e., well before the FY 2010-11 relevant to the impugned AY 2011-12 and it had a population of 42,123 as per 2011 Census.*

*6.5.8 Under the circumstances, the assessee cannot raise objection with regard to enquiries conducted by the AO as to the usage of the lands and nature of surrounding lands, which are immaterial and has no locus standi, when the land under transfer is falling under the purview of capital asset as envisaged u/s.2(14)(a)(iii)(a) of the Act since it is situated within the limits of Rajam Nagar Panchayat.*

*6.5.9 In view of the aforementioned factual and legal matrix, I do not have any reason to interfere with the decision of the AO. Accordingly, the decision of the AO to treat the property as capital asset u/s.2(14)(a)(iii)(a) of the Act is sustained. Thus, the alternative ground of appeal filed by the assessee on this issue is dismissed”.*

5. Learned departmental representative has vehemently contended during the course of hearing that both the lower authorities have rightly treated the assessee's land sold as a capital asset resulting in the long term capital gain addition. I find no merit to accept the foregoing Revenue's argument as the amended Section 2(14) Explanation (iii) clause(b) reads 'as the Central Government may having regard to the extent and scope for, urbanization of' that area and other relevant consideration, specify in this behalf notification in the official gazette'. It therefore emerges that once the amendment to the above statutory provision came vide Finance Act, 2013 w.e.f. 01-04-2014 the assessee's case would continue to be governed by the earlier un-amended provisions as we are in AY.2011-12. This is also not the Revenue's stand that assessee's land(s) deserved to be treated as a capital asset as per the un-amended proviso since covered by any notification issued in

this behalf from the Central Government. I therefore direct the Assessing Officer to delete the impugned long term capital gain addition on this count alone.

6. This assessee's appeal is allowed in above terms.

*Order pronounced in the open court on 26<sup>th</sup> April, 2021*

Sd/-  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 26-04-2021

TNMM

*Copy to :*

*1.Smt. Mangavalli Grandhi, C/o.Flat No.610, 6<sup>th</sup> Floor,  
Babukhan Estate, Basheerbagh, Hyderabad.*

*2.The Income Tax Officer, Ward-6(2), Hyderabad.*

*3.CIT(Appeals)-6, Hyderabad.*

*4.Pr.CIT-6, Hyderabad.*

*5.D.R. ITAT, Hyderabad.*

*6.Guard File.*