

I.T.A Nos.176/2015,
520/2014, 175/2015,
177/2015, 178/2015,
179/2015, 298/2015

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JULY, 2022

PRESENT

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

I.T.A NO.176 OF 2015

C/W

I.T.A NO.520 OF 2014

I.T.A NO.175 OF 2015

I.T.A NO.177 OF 2015

I.T.A NO.178 OF 2015

I.T.A NO.179 OF 2015

I.T.A NO.298 OF 2015

IN I.T.A NO.176 OF 2015

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
C.R. BUILDINGS
QUEENS ROAD
BANGALORE-560 001

2. ASSISTANT COMMISSIONER
OF INCOME TAX
CIRCLE 6(1)
BANGALORE

....APPELLANTS

(BY SHRI. E.I. SANMATHI, ADVOCATE)

AND:

M.R. ANANDARAM
(HUF)

I.T.A Nos.176/2015,
520/2014, 175/2015,
177/2015, 178/2015,
179/2015, 298/2015

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GOKULA HOUSE, JALAHALLI
GOKULA
BANGALORE-560 054
PAN: AABHM9891G

...RESPONDENT

(BY SHRI. A. SHANKAR, SENIOR ADVOCATE FOR
SHRI. M. LAVA, ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260-A OF THE
INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED:
21/11/2014 PASSED IN ITA NO.1653/BANG/2012, FOR THE
ASSESSMENT YEAR 2008-2009, PRAYING TO DECIDE THE
FOREGOING QUESTION OF LAW AND/OR SUCH OTHER
QUESTIONS OF LAW AS MAY BE FORMULATED BY THE
HON'BLE COURT AS DEEMED FIT AND ETC.

IN I.T.A NO.520 OF 2014

BETWEEN:

1. COMMISSIONER OF INCOME
TAX-III
C.R. BUILDING
QUEENS ROAD
BANGALORE-560 001

2. THE ASSISTANT COMMISSIONER
OF INCOME TAX
CIRCLE 6(1)
BANGALORE

....APPELLANTS

(BY SHRI. E.I. SANMATHI, ADVOCATE)

AND:

SHRI. M.R. SEETHARAM
GOKULA HOUSE
JALAHALLI
GOKULA
BANGALORE-560 054
PAN: AAHHS7342J

...RESPONDENT

(BY SHRI. A. SHANKAR, SENIOR ADVOCATE FOR
SHRI. M. LAVA, ADVOCATE)

I.T.A Nos.176/2015,
520/2014, 175/2015,
177/2015, 178/2015,
179/2015, 298/2015

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THIS ITA IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED: 13/06/2014 PASSED IN ITA NO.1654/BANG/2012, FOR THE ASSESSMENT YEAR 2008-2009, PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND ETC.

IN I.T.A NO.175 OF 2015

BETWEEN:

1. COMMISSIONER OF INCOME TAX
C.R. BUILDINGS
QUEENS ROAD
BANGALORE-560 001
 2. ASSISTANT COMMISSIONER
OF INCOME TAX
CIRCLE 6(1)
BANGALORE
- ...APPELLANTS

(BY SHRI. E.I. SANMATHI, ADVOCATE)

AND:

M.R. KODANDARAM
(HUF)
GOKULA HOUSE, JALAHALLI
GOKULA
BANGALORE-560 054
PAN: AABHM9893E

...RESPONDENT

(BY SHRI. A. SHANKAR, SENIOR ADVOCATE FOR
SHRI. M. LAVA, ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED: 21/11/2014 PASSED IN ITA NO.1652/BANG/2012, FOR THE ASSESSMENT YEAR 2008-2009, PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND ETC.

IN I.T.A NO.177 OF 2015

BETWEEN:

1. COMMISSIONER OF INCOME-TAX
C.R. BUILDINGS
QUEENS ROAD
BANGALORE-560 001
 2. ASSISTANT COMMISSIONER
OF INCOME TAX
CIRCLE 6(1)
BANGALORE
-APPELLANTS

(BY SHRI. E.I. SANMATHI, ADVOCATE)

AND:

M.R. PRABHAVATHY
(HUF)
GOKULA HOUSE, JALAHALLI
GOKULA
BANGALORE-560 054

...RESPONDENT

(BY SHRI. A. SHANKAR, SENIOR ADVOCATE FOR
SHRI. M. LAVA, ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED: 21/11/2014 PASSED IN ITA NO.1655/BANG/2012, FOR THE ASSESSMENT YEAR 2008-2009, PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND ETC.

IN I.T.A NO.178 OF 2015

BETWEEN:

1. COMMISSIONER OF INCOME-TAX
C.R. BUILDINGS
QUEENS ROAD
BANGALORE-560 001

I.T.A Nos.176/2015,
520/2014, 175/2015,
177/2015, 178/2015,
179/2015, 298/2015

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2. THE INCOME TAX
OFFICER, WARD 6(4)
BANGALORE ...APPELLANTS

(BY SHRI. E.I. SANMATHI, ADVOCATE)

AND:

M.R. SAMPANGIRAMIAH
(HUF)
GOKULA HOUSE, JALAHALLI
GOKULA
BANGALORE-560 054
PAN: AGDPS5885J ...RESPONDENT

(BY SHRI. A. SHANKAR, SENIOR ADVOCATE FOR
SHRI. M. LAVA, ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260-A OF THE
INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED:
21/11/2014 PASSED IN ITA NO.1656/BANG/2012, FOR THE
ASSESSMENT YEAR 2008-2009, PRAYING TO DECIDE THE
FOREGOING QUESTION OF LAW AND/OR SUCH OTHER
QUESTIONS OF LAW AS MAY BE FORMULATED BY THE
HON'BLE COURT AS DEEMED FIT AND ETC.

IN I.T.A NO.179 OF 2015

BETWEEN:

1. COMMISSIONER OF INCOME-TAX
C.R. BUILDINGS
QUEENS ROAD
BANGALORE-560 001

2. ASSISTANT COMMISSIONER
OF INCOME TAX
CIRCLE 6(1)
BANGALORE ...APPELLANTS

(BY SHRI. E.I. SANMATHI, ADVOCATE)

I.T.A Nos.176/2015,
520/2014, 175/2015,
177/2015, 178/2015,
179/2015, 298/2015

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AND:

M.R. PATTABHIRAM
(HUF)

GOKULA HOUSE, JALAHALLI
GOKULA

BANGALORE-560 054

PAN: AACHM7618G

...RESPONDENT

(BY SHRI. A. SHANKAR, SENIOR ADVOCATE FOR
SHRI. M. LAVA, ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260-A OF THE
INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED:
21/11/2014 PASSED IN ITA NO.262/BANG/2013, FOR THE
ASSESSMENT YEAR 2008-2009, PRAYING TO DECIDE THE
FOREGOING QUESTION OF LAW AND/OR SUCH OTHER
QUESTIONS OF LAW AS MAY BE FORMULATED BY THE
HON'BLE COURT AS DEEMED FIT AND ETC.

IN I.T.A NO.298 OF 2015

BETWEEN:

1. COMMISSIONER OF INCOME
TAX-III
REVENUE BUILDINGS
QUEENS ROAD
BANGALORE-560 001

2. THE ASSISTANT COMMISSIONER
OF INCOME TAX
CIRCLE 6(1)
BANGALORE

....APPELLANTS

(BY SHRI. E.I. SANMATHI, ADVOCATE)

AND:

M.R. PADMAVATHY TRUST
GOKULA HOUSE, JALAHALLI

I.T.A Nos.176/2015,
520/2014, 175/2015,
177/2015, 178/2015,
179/2015, 298/2015

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GOKULA
BANGALORE-560 054
PAN: AAATM34931G

...RESPONDENT

(BY SHRI. A. SHANKAR, SENIOR ADVOCATE FOR
SHRI. M. LAVA, ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED: 21/11/2014 PASSED IN ITA NO.1651/BANG/2012, FOR THE ASSESSMENT YEAR 2008-2009, PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND / OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLANTE ORDER DATED:21/11/2014 PASSED BY THE ITAT, 'B' BENCH, BENGALURU, IN APPEAL PROCEEDINGS IN ITA NO.1651/BANG/2012 FOR ASSESSMENT YEAR 2008-09, AS SOUGHT FOR IN THIS APPEAL; AND TO GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

THESE ITAs, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20.06.2022 COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **P.S.DINESh KUMAR J**, PRONOUNCED THE FOLLOWING:-

JUDGMENT

These appeals by Revenue have been admitted to consider the questions of law framed in respective appeals. After hearing Shri. E.I. Sanmathi, learned Standing Counsel for the Revenue and Shri. A. Shankar, learned Senior

Advocate for the assesseees, we are of the opinion that only following three questions arise for consideration in all these appeals. Accordingly, we have reframed the questions of law as follows:

1. *Whether the lands in question fall within the definition of 'Capital Asset' under Section 2(14) of the Act?*
2. *Whether the Tribunal was justified in law in holding that lands which were converted and lapsed and which have been cultivated and yielding agricultural income can be held to be agricultural lands for the purpose of Section 2(14) of the Act?*
3. *Whether the Tribunal was justified in holding that BIAPAA does not constitute a municipality for the purposes of Section 2(14) of the Act?*

2. Brief facts of the case are, assesseees are owners of different pieces of lands. They have entered into several sale transactions, the details of which are as follows:

Owner	extent	date of sale
M R Seetha Ram	6 acres 1 guntas	14.02.2007
M R Pattabhi Ram	5 acres 37 guntas	14.02.2007
MR Kodanda Ram	10 acres 8 guntas	14.02.2007
MR Ananda Ram	21 acres 27 guntas	14.02.2007
MR Prabhavathy	2 acres 10 guntas	08.02.2008
	5 acres 38 guntas	08.02.2008
	9 acres 12 guntas	08.02.2008
	5 acres 26 guntas	14.01.2008
MR Sampangiramaiah	11 acres	08.02.2008
MR Padmavathy Trust	9 acres 32 guntas	08.02.2008

3. Assessee filed returns of income for A.Y.¹ 2008-09 under Section 139(1) of the Income Tax Act, 1961 ('the Act' for short) and revised returns excluding capital gains derived from the sale of their lands. The Assessing Officer completed the assessment under Section 143(3) of the Act and

¹ Assessment Year

added taxes against each assessee, as shown herein below, on the ground that the lands sold by them are capital assets and the capital gains arising on the said assets are chargeable to tax:

Assessee	Original return of income	Revised return of income
M R Seetha Ram	14,86,22,780/-	22,90,570/-
M R Pattabhi Ram	14,79,185/-	-
MR Kodanda Ram	26,56,39,400/-	12,76,910/-
MR Ananda Ram	28,81,44,630/-	13,31,150/-
MR Prabhavathy	2,95,93,980/-	47,74,140/-
MR Sampangiramaiah	7,58,98,280/-	6,25,560/-
MR Padmavathy Trust	7,79,704/-	-

4. Assessee challenged the re-assessment orders before CIT²(Appeals) and they were dismissed. They challenged the said orders before ITAT³ in ITAs No.1653/BANG/2012, 1654/BANG/2012, 1652/BANG/2012, 1655/BANG/2012, 1656/BANG/2012, 262/BANG/2013 AND 1651/BANG/2012 the same were allowed. The cross-objections filed by the Revenue stood dismissed as 'not pressed'. Feeling aggrieved by the orders passed by the ITAT, Revenue has preferred these appeals and the same are disposed of by this common judgment.

5. Shri. E.I. Sanmathi for the Revenue, submitted that:

- Assessee in all these cases are individuals.

During 2004, they got their agricultural lands converted for non-agricultural purpose;

² Commissioner of Income Tax

³ Income Tax Appellate Tribunal

- During 2007, assesseees have sold their lands duly converted for non-agricultural purposes, in favour of M/s. ELT Corporate Services Pvt. Ltd., and others. **The agreement and the sale deeds disclose that the lands sold are converted lands;**
- the Assessing Officer has rightly held that the lands sold by the assesseees are capital assets and the capital gains income is chargeable to tax. The CIT (Appeals) has confirmed the order passed by the Assessing Authority. However, the ITAT, on an erroneous presumption that there was no change in the physical characteristics of the lands and that the assesseees have been carrying on agricultural activity even after they got the lands converted for non-agricultural purposes, has allowed the appeals;

- Assessee's lands are within 8 kms. from Devanahalli Municipality and within 8 kms. from BBMP when measured aerially. Therefore, they fall within the definition of Section 2(14)(iii) of the Act;
- the lands are situated within the limits of BIAPAA⁴.

6. Thus, in substance, Shri. Sanmathi contended that the lands sold by the assessee are non-agricultural lands and fall within the definition of capital assets under Section 2(14)(iii) of the Act and therefore attract tax on the Capital gains.

7. Opposing the appeals, Shri. A. Shankar, learned Senior Advocate submitted that:

- though the lands were converted in 2004, assessee has not diverted the use of land but continued their agricultural operation.

⁴ Bangalore International Area Plan Approval Authority

They have offered huge sums of income as 'agricultural income' for the A.Y. 2004-05 to 2009-10. The Revenue has accepted the same and passed assessment orders, which have attained finality;

- Only such lands which fall within the area specified in the Official Gazette published by the Central Government, fall within the definition of 'Capital Asset' under Section 2(14) of the Act. The Notification issued in the year 1994 was in force and only the lands within a distance of 8 kms. from the Municipal limits from Bengaluru would fall within the definition;
- it is settled by various judicial pronouncements that mere conversion of land does not take away the character of the land

and what is required to be examined is its actual condition and use.

8. With these main submissions, Shri. Shankar prayed for dismissal of these appeals.

9. We have carefully considered rival contentions and perused the records.

10. Undisputed facts of the case are, lands in question have been converted for non-agricultural purpose under Section 95 of the Karnataka Land Revenue Act. They have been sold on April 12, 2007. Assesseees have offered their agricultural income to tax for the Accounting years from 2004-05 to 2009-10.

Re: Question No.1

11. The assesseees' specific case is, lands in question do not fall within the definition of 'Capital Asset', because, though converted for

non-agricultural purposes, assesseees have not diverted the lands and continued agricultural operation. They have offered and paid tax on agricultural income for the period between 2004-05 and 2009-10.

12. 'Capital Asset' is described in Section 2(14) of the Act. Clause (b) to Section 2(14)(iii) has been substituted with effect from 01.04.2014. Prior to substitution, it read as follows:

"(iii) agricultural land in India, not being land situate-

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

13. It was argued by Shri. Sanmathi that the lands in question fall within 8 Kms from the Municipality of Devanahalli and within 8 Kms of

aerial distance from the Municipal Corporation of Bengaluru.

14. Shri. Shankar, placing reliance on the Notification No.SO 10(E) [No. 9447 (F.NO.164/3/87-ITA-I)] dated 06.01.1994 issued by the Central Government submitted that agricultural lands, which fall within a distance of 8 kms from Municipal Limits in all directions from Bengaluru only, would fall within the definition of 'Capital Asset'.

15. The Assessing Officer in para 4.3.3 of his order has recorded that assessee had filed a Certificate from the Tahasildar, Devanahalli, stating that the distance was 11 kms. A letter under Section 133(6) of the Act was issued to the Tahasildar to furnish the shortest possible distance, but there was no response. On verification of google map, it was noticed that several areas of

BBMP are located within 8 kms. from the lands in question. On this premise, the Assessing Officer has held that the lands are within 8 kms. from Bengaluru Municipality(BBMP). The CIT(A) in para 4.8 of his order has upheld Assessing Officer's conclusion that BIAPAA is a Municipal body and dismissed the appeal. The ITAT has framed two issues for its consideration. The second question is with regard to treating BIAPAA as Municipality. On this aspect, ITAT has recorded in para 8.3 of its order that a BIAPAA is merely a planning authority. A Municipality has to be necessarily an elected body and therefore, BIAPAA does not qualify to be considered as a Municipality. Further, by placing reliance on *CIT Vs. Murali Lodge*⁵ has held that the Assessing Authority and CIT(A) were not justified in holding that the subject land could not be treated as agricultural lands.

⁵ (1992)194 ITR 125 (Ker)

16. Thus, the Assessing Officer, the CIT(A) and the ITAT have considered both aspects namely, the distance from BBMP and the lands falling within the notified area of BIAPAA.

17. Section 2(14)(iii)(b) of the Act, prior to amendment, does not indicate measurement of distance aerially. We have also perused the Notification dated 06.01.1994 relied upon by Shri. Shankar. In column No.4 of the Schedule to the Notification, the distance is mentioned as 8 kms. from municipal limits in all directions.

18. It is salutary principle of interpretation of law that a provision of law must be understood in its plain meaning and the effect should be given to each and every word employed therein. Therefore, the language employed in the Act and the Notification cannot be stretched to include the word 'aerial'. As per the Certificate of the Tahasildar

produced before the Assessing Officer and PWD Engineer's Certificate produced before the CIT(A), the distance between the lands in question and BBMP is more than 8 kms. Therefore, Shri. Sanmathi's contention with regard to the distance from the Municipal area fails.

Re: Question No.2

19. It was argued by Shri. Sanmathi that admittedly, the lands have been converted. Therefore, Tribunal was not justified in holding them as agricultural lands.

20. In *CWT Vs. Officer-in-Charge (Court of Wards)*⁶, relied upon by Shri Shankar, it is held as follows:

"...It is true that this case is not a direct authority upon what is "agricultural land". Nevertheless, it goes a long way in helping us to decide what could be agricultural land. We think that this must be land which

⁶ (1976) 105 ITR 133 (SC)

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could be said to be either actually used or ordinarily used or meant to be used for agricultural purposes. In other words, "agricultural land" must have a connection with an agricultural user or purpose. It is on the nature of the user that the very large number of definitions and authorities discussed by this Court, in Raja Benoy Kumar Roy case have a direct bearing.

(Emphasis Supplied)

21. In the above case, the Apex Court has also held that it is not the mere potentiality, which will affect its valuation as part of the assets but its actual condition and intended use which has been seen for purposes of exemptions from wealth tax.

22. In *Sarifabibi Mohmed Ibrahim Vs. CIT*⁷ 13 factors/indicators recorded by the Gujarat High Court have been quoted and it is held that all those factors would not be present or absent in any given case and that in each case one or more of the factors may make appearance and the ultimate

⁷ [1993] 204 ITR 631 (SC)

decision will have to be reached on the balanced consideration of totality of circumstances.

23. Shri. Sanmathi has relied upon *CIT Vs. Gemini Pictures Circuit (P) Ltd*⁸ and contended that the lands in the case on hand cannot be considered as agricultural lands. In the case of *Gemini Pictures*, the Assessing Officer had held that the property known as Spencers Hotel on the Mount Road in Chennai comprising of 70 acres and 16 grounds was not an agricultural land and the same was affirmed by the first appellate authority. There was difference of opinion between the members of the ITAT and it was referred to the Vice President and he agreed with the Judicial Member holding that it was not an agricultural land. Assessee challenged the same before the High Court and High Court held the land as agricultural land. The revenue challenged High Court's decision in the

⁸ [1996] 220 ITR 43

Supreme Court of India. Allowing Revenue's appeal, the Apex Court has held as follows:

".. that for ascertaining the true character and nature of the land, it must be seen whether it has been put to use for agricultural purposes for a reasonable span of time prior to the date of sale and further whether on the date of sale the land was intended to be put to use for agricultural purposes for a reasonable span of time in future. Examining the case from the said point of view, the High Court held that the fact that the agreement of sale was entered into by the assessee with a housing society is of crucial relevance since it showed that the assessee had agreed to sell the land for admittedly non-agricultural purposes. The ratio of the said decision was approved in Sarifabibi [1993 Supp (4) SCC 707 : (1993) 204 ITR 631] "

(Emphasis Supplied)

24. As held in *Sarifabibi*, ultimate decision will have to be reached based on balanced consideration of the totality of circumstances.

25. In the case of *Gemini Pictures*, the property was situated on the Mount Road in Chennai and Spencer hotel was situated in the land.

In contradistinction, in the case on hand, the Tribunal has recorded in para no. 7.2.4 that though the land was converted, the assessee had continued agricultural operations which was evident from the fact that the income derived from the agricultural operations declared by the assesseees were accepted by the revenue. Further, no evidence was brought on record by the revenue to suggest that the lands in question were used for any other purpose other than cultivation after conversion. The Tribunal has also recorded a finding of fact in para 7.2.5 that the land was inspected by the Tribunal on 10.04.2014 and during the inspection the Tribunal had noticed that the subject property was a part of large tract of land having agricultural operations. There were fruit yielding trees. The Tribunal has also adverted to the certificate of Senior Assistant Director of Horticulture certifying that there were fruit yielding

mangoes, sappota, coco, cashew, jackfruit, rose
apple, guava trees aged 25 to 30 years.

26. It is settled that ITAT is the last fact finding authority. It has inspected the lands on 10.04.2014 and recorded a finding that agricultural operations were undertaken by the Assesseees and there were trees aged 25-30 years on the land. Further, as per the Notification issued by the Central Government, the lands do not fall within 8 kms. from Municipality of Bangalore. Above all, assessments for the accounting years for the period from 2004-05 to 2009-10 have attained finality except for the period 2008-09.

27. In view of the above, we are of the considered opinion that the order passed by the ITAT is based on evidence on record and does not call for any interference.

Re: Question No.3

28. In reply to Shri. Sanmathi's argument that the lands cannot be treated as agricultural lands as they fall within the notified area under BIAPAA, Shri. Shankar submitted that inclusion of lands in Special Zone cannot be a determining factor. Shri. Shankar has placed reliance on the decision of Andhra Pradesh High Court in *CIT Vs. Smt. T. Urmila*⁹ dismissing Revenue's appeal. He has also placed the order passed by the ITAT in that case for perusal. In that case the land in question was notified by the Government declaring that the area would fall within the jurisdiction of HADA which is a statutory body. The ITAT held that mere inclusion of land without any infrastructure development does not convert the land into non-agricultural land. On appeal, the High Court has held that HADA is not a body within the

⁹ ITTA No. 297 of 2013 decided on 17.07.2013

meaning of clauses (a) and (b) of Section 2 (14) (iii) of the Act and affirmed the decision of the ITAT that the sale of said land did not form part of capital gains. Thus the argument of Shri. Sanmathi that the lands in these cases fall within the BIAPAA and therefore the sale of lands attract capital gains tax also fails.

29. In the light of the above discussion, questions raised in these appeals by the Revenue are answered in favour of the assesseees and against the Revenue. Accordingly these appeals are ***dismissed.***

No Costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SPS