

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ (SMC) Bench, Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

ITA No.1047/Hyd/2016
(Assessment Year: 2007-08)

Sri Meela Satyanarayana (HUF) Vs Suryapet, Nalgond Distt. PAN: AACMH 1994 D <i>(Appellant)</i>	Income Tax Officer Suryapet <i>(Respondent)</i>
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For Assessee :	Shri M.V. Anil Kumar
For Revenue :	Shri V. Sreekar, DR

Date of Hearing:	23.08.2017
Date of Pronouncement:	30.08.2017

ORDER

This is assessee's appeal for the A.Y 2007-08 against the order of the CIT(A)-10, Hyderabad, dated 18.01.2016. In this appeal, the assessee is aggrieved by the order of the CIT (A) in holding that the compensation received towards loss of crops and losing the rights to carry on agricultural activities on the land under which the gas pipeline has been laid, is exempt from capital gains tax.

2. Brief facts of the case are that the assessee, an HUF, filed its return of income for the A.Y 2007-08 on 29.02.2008 admitting "income from other sources" of Rs.3,99,430 and agricultural income of Rs.12,13,200. During the assessment proceedings u/s 143(3) of the Act, the AO asked the assessee to furnish the details regarding his claim of agricultural income. The

assessee furnished the details. The AO observed that the assessee has received a sum of Rs.8,54,777 from M/s. Reliance Gas Transportation Infrastructure Ltd towards the loss of crops and compensation towards losing the right to carry on agricultural activity due to passing of their pipeline through a part of the agricultural land belonging to the assessee. The AO observed that the agricultural income means, there should be land and it should be used for agricultural purposes and income should be derived from agriculture and that in the case of the assessee, the receipt is under different heads such as land compensation and trees compensation. He held that since the land is not transferred, the compensation is only “other income” and compensation towards “loss of trees” is not allowable. Therefore, he treated the entire sum of Rs.8,54,777 as income of the assessee and brought it to tax.

3. Aggrieved, the assessee preferred an appeal before the CIT (A) who granted partial relief to the assessee, holding that the compensation received by the assessee for loss of trees and right to carry on agricultural operation over the land under which the pipeline has been laid down is agricultural income and therefore, exempt from tax. However, as regards income on “loss of trees”, he held that it is chargeable to income tax. Aggrieved, the assessee is in further appeal before me, raising the following grounds of appeal:

“1. Your Appellant submits that the CIT(A) erred in law and facts of the case in granting partial relief ignoring the fact the entire compensation received is agricultural income.

2. Your Appellant submits that the CIT(A) has erred in law and facts of the case in giving directions to the Assessing officer to assess Rs. 25,376/- as liable to capital gains and Rs. 5,29,401/- as income ignoring the fact that the consideration is received towards loss of crop and losing the right to carry on agricultural activity due to passing of gas pipeline through a part of the agricultural lands.

3. The CIT(A) ought to have appreciated the fact that Rs. 2,29,585/- received is also compensation towards loss of crop and losing the right to carry on agricultural activity due to passing of gas pipeline through a part of the agricultural lands, this fact is not disputed by the CIT(A) as well as Assessing Officer, considered the same as agricultural income and allowed exemption as claimed.

4. The CIT(A) as well as the Assessing Officer erred in law and facts of the case in not considering Rs. 8,54,777/- received as compensation for not using the land for agricultural activity and loss of trees, which is in the nature of agricultural income.

5. Your Appellant submits that CIT(A) erred in law and facts of the case in considering the loss of standing trees as capital loss on mere assumption and presumptions ignoring the fact that the mango trees have been lost, ought to have considered the entire compensation as agricultural income and allowed exemption.

6. Your appellant submits that alternatively the amount of Rs. 8,54,777/- is a capital receipt not subjected to tax as it is compensation towards not to carry on the agricultural activity.

For these and, such other grounds that may be urged at the time of hearing, your Appellant pray that the addition may be deleted”.

4. The learned Counsel for the assessee submitted that the compensation received by the assessee was entirely for loss of crops and loss of the right to cultivate the agricultural land over the land under which the gas pipeline has been laid and therefore, the entire amount is to be treated as agricultural income.

5. The learned DR however, supported the orders of the authorities below and placed reliance upon the decisions of the Hon'ble Supreme Court in the case of CIT vs. Jyotikana Chowdhurani reported in (1957) 32 ITR 705 (S.C) and V.Venugopala Varma Rajah vs.CIT reported in (1970) 76 ITR 460 (S.C) in support of his contentions.

6. The learned Counsel for the assessee, on the other hand, placed reliance upon the decision of the Coordinate Bench of the Tribunal at Jaipur in the case of Income Tax Officer vs. Arjundass Omprakash reported in (1984) 17 Taxmann.com 74 (Jaipur).

7. Having regard to the rival contentions and the material on record, we find that the Hon'ble Supreme Court in the case of V.Venugopala Varma Rajah vs. CIT (cited Supra) was considering the case of an assessee who had leased, under an agreement, 500 acres of forest land for cutting and removing trees and the trees were not removed with roots and only the stumps of trees were allowed to remain in the land so that the trees may regenerate.

The ITO had treated the income from sale of trees as taxable and the Hon'ble Supreme Court has upheld the said findings observing that in case there is a sale of trees with the roots so that there is no possibility of regeneration, then it is in the nature of the capital. In the case before us also, the compensation was paid for loss of trees and there is no chance of the trees regenerating again. Therefore, the compensation for loss on trees is to be considered capital in nature and cannot be brought to tax.

8. In the case of CIT vs. Jyotikana Chowdhurani (cited Supra), the Hon'ble Supreme Court was considering the similar facts as in the case of V.Venugopala Varma Rajah vs.CIT and it was held that the forestry operations which was performed by the assessee were of insignificant value as compared with the gross receipts derived by them from the sale of forest trees. In my opinion, this decision is also in favour of the assessee as the assessee has received the compensation for loss of trees on laying of gas pipeline and such income is capital in nature. The decision of the Jaipur Bench of the Tribunal in the case of Income Tax Officer vs. Arjundass Omprakash (Cited Supra) is exactly on similar set of facts and the Tribunal has held that the amount received by the assessee in respect of the land from the government for deprivation of the cultivation is agricultural income and not income from other sources. In the case of the assessee also, the assessee is not allowed to cultivate the trees or carry on any agricultural operations on the land under which the gas pipeline has been laid down. Therefore, the entire

compensation received for the loss of crops/loss of trees is clearly agricultural income, hence the assessee's appeal is allowed.

9. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 30th August, 2017.

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 30th August, 2017.

Vinodan/sps

Copy to:

- 1 M. Anandam & Co. CAs, 7A Surya Towers, SP Road, Secunderabad
- 2 Income Tax Officer Suryapet, Nalgonda
- 3 CIT (A)-10 Hyderabad
- 4 CIT – (IT & TP) Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order