**(1992) 01 KL CK 0014**

**In the High Court Of Kerala**

**Case No :** Income-tax Reference No. 175 of 1991

Commissioner of Income Tax — APPELLANT

Vs

Thomas Kurien — RESPONDENT

**Date of Decision :** 03-01-1992

**Acts Referred:**
Income Tax Act, 1961 — Section 2(14), 45

**Citation :** (1992) 103 CTR 300 : (1992) 195 ITR 531

**Hon'ble Judges :** K.T. Thomas, J;K.S. Paripoornan, J

**Bench :** Division Bench

**Advocate :** P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant; S. Sirijagan, for the Respondent

## Judgement

K.S. Paripoornan, J.—At the instance of the Revenue, the Income tax Appellate Tribunal, Cochin Bench, has referred the following question of law as directed by this court in O. P. No. 1810 of 1987, by order dated October 30, 1991.

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and has jurisdiction to hold that the land in question is not a capital asset within the meaning of the definition and hence not liable to capital gains tax on its sale ?"

2. The respondent is an assessee to Income Tax. Along with his mother, the respondent-assessee inherited agricultural lands on the demise of his father. Out of the above, the assessee sold 2 acres 36 cents and 329 S. Links in Survey No. 121/1 and 86 cents and 250 S. Links in Survey No. 136/ 10-all situate within the municipal limits of Kottayam to the Kottayam Co-operative Housing Society for a consideration of Rs. 1,91,760. The Income Tax Officer held that capital gains accrued as a result of the transaction aforesaid. There was an appeal against the original assessment before the Appellate Tribunal. The Tribunal set aside the assessment for compliance with Section 144B of the Income Tax Act and directed that a fresh assessment, after following the procedure, may be made. The assessment was redone. The assessing authority determined the net capital

gains subject to tax at Rs. 56,481. The plea of the assessee that the profit, if any, arose out of the transfer of agricultural lands and so it is not exigible to capital gains tax was impliedly negatived. In appeal, the first appellate authority, following the decision of the Bombay High Court in Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another, , held that the assessee was not liable to pay income tax on capital gains derived from the sale of the agricultural lands. The second appeal filed by the Revenue was dismissed by the Income Tax Appellate Tribunal. Similarly, the application filed by the Revenue u/s 256(1) of the Income Tax Act was also dismissed. It is thereafter in proceedings u/s 256(2) of the Act that this court directed the Income Tax Appellate Tribunal to refer the question of law formulated hereinabove for the decision of this court.

3. We heard counsel. A Bench of this court in CIT v. T. K. Sarala Devi [1987] 167 ITR 136, dissented from the decision of the Bombay High Court in Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another, and held that the profit which arose out of the transfer of agricultural lands is exigible to capital gains tax. The above decision was followed subsequently in I. T. R. No. 6 of 1985, judgment dated June 13,1989 Commissioner of Income Tax Vs. Glory Paul, , I. T. R. No. 37 of 1985, judgment dated June 13, 1989 Commissioner of Income Tax Vs. A.S. Iqbal (legal heir of late A.B. Syed Mohammed), and also in ITR No. 121 of 1984, judgment dated July 5, 1989 COMMISSIONER OF Income Tax Vs. GLORY PAUL., ). In the light of the aforesaid Division Bench decisions of this court, it is agreed that the decision of the Appellate Tribunal affirming the decision of the first appellate authority that the assessee is not liable to pay Income Tax on capital gains derived from the sale of agricultural lands is erroneous in law. The Appellate Tribunal was in error in affirming the decision of the first appellate authority and in holding that the land in question is not liable to capital gains tax on its sale. We, therefore, answer the question referred to this court in the negative, against the assessee and in favour of the Revenue.

4. The Registrar of this court shall send a copy of this judgment under his signature and the seal of this court to the Income Tax Appellate Tribunal, Cochin Bench.

 