

आयकर अपीलीय अधिकरण, "ए" न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यके समक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 1799/Mds/2015

निर्धारण वर्ष /Assessment year : 2008-2009

Shri. N. Sankaralingam,  
No.70, III Street,  
Parvathipuram,  
Musiri Town,  
Trichy Dist.

**Vs.** The Income Tax Officer,  
Ward –I(1)  
Trichy

**[PAN AAZPS 1990E ]**  
**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. Philip George, Advocate

प्रत्यर्थी की ओर से /Respondent by : Shri. P. Radhakrishnan, IRS, JCIT

सुनवाई की तारीख/Date of Hearing : 03-02-2016

घोषणा की तारीख /Date of Pronouncement : 11-02-2016

**आदेश / ORDER**

**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-I, Tiruchirapalli in ITA No.270/2013-14/CIT(A)/TRY, dated 03.03.2015 for the assessment

year 2008-2009 passed u/s.143(3) r.w.s. 147 and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

**2.** There is a delay of 30 days in filing the appeal by the assessee. At the time of hearing the Id. Counsel has filed an affidavit explaining the reasons for delay and the Id. DR has no serious objections for condonation of delay. After hearing the submissions, we are satisfied with sufficient and reasonable cause for filing the appeal belatedly and we therefore condone the delay and admit the appeal.

**3.** The assessee has raised substantive grounds in respect of computation of Long Term Capital Gains under provisions of Sec.50C of the Act by the Assessing Officer in respect of agricultural land and Id. Commissioner of Income Tax (Appeals) erred in dismissing the appeal without providing adequate opportunity of hearing and violated the principles of natural justice.

**4.** The Brief facts of the case that the assessee is an individual and filed return of income on 29.10.2008. Subsequently, as per I & CI information the Revenue found that assessee has sold immovable property and provisions of Sec. 50C of the Act are applicable and issued notice u/s.148 of the Act dated 27.02.2013. In compliance to the notice the Id. Authorised Representative of the assessee submitted

that the assessee has sold agricultural land for a sale consideration of ₹10,00,000/- on 28.05.2007. At the time of registration the value adopted at ₹150/- per sq.ft by the Register and the sale deed was registered on market value adopted for the stamp duty ₹26,16,000/.

The Id. Authorised Representative produced Chitta Adangal for land Nos.1405 & 1406 and claimed that sale transaction shall not attract provisions of capital gains. The land sold was used for agricultural purpose till the date of sale and produced certificate from Village Administrative Officer (VAO), Musiri Taluk declaring agricultural crop paddy was harvested during the financial year 2007-2008. But the Id. Assessing Officer on perusal of sale deed and property details has found that the land is situated in Musiri Town Panchayat and provisions of Sec2(14)(iii) (a) of the Act are attracted and concluded that the land sold was a housing plot. The Authorised Representative submitted that the land was used for agricultural purpose before two years till the date of disposal and relied on provisions of Sec.54B of the Act were the capital gains arising on transfer of land used for agricultural purpose is exempted if another land is purchased within a period of two years from the date of transfer and emphasized on the definition of agricultural land and contested that the population of entire municipality to be considered not any particular village for

treating agricultural land and supported with judicial decisions. The Assessing Officer considered the submissions and treated the land as capital asset and Applying the provisions of Sec. 50C of the Act by adopting SRO value, determined long term capital gains and assessed total income of ₹26,53,385/- and raised demand. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals).

**5.** In the appellate proceedings, none appeared on behalf of the assessee. The Id. Commissioner of Income Tax (Appeals) based on the findings of the Assessing Officer, provisions of Sec.50C and certificate from Village Administrative Officer (VAO) in respect of paddy cultivation has concluded that land sold was only housing plot and not agricultural land ignoring the submissions made by assessee in assessment proceedings that the purchaser obtained the land and made them into housing plots. The assessee for personal reasons made distress sale to settle the loans and marriage expenses of the daughter and also the guideline value of SRO shall not be applied to the agricultural land. The Id. Commissioner of Income Tax (Appeals) based on information of assessment records and grounds of appeal considered the provisions of Sec.50C of the Act are mandatory on the Assessing Officer to adopt the value of Registration authorities and

concluded with the findings of the Assessing Officer without giving another opportunity to the assessee and confirmed the order of the Assessing Officer. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the assessee assailed an appeal before the Tribunal.

**6.** Before us, Id. Authorised Representative of the assessee reiterated his submissions made before assessing authorities alongwith evidence and also judicial decisions that the land sold is agricultural land and paddy was harvested and assessee undertaken agricultural operations prior to date of sale and received sale consideration of ₹10,00,000/- and the value was adopted at the time of registration. Further, the assessee is a senior citizen sold property as distress sale for discharging the liabilities, expenditure in performing daughter's marriage and to pay the debts. The purchaser took the possession of land and converted into housing plot but till the date of sale it is an agricultural land and land falls within the definition of agricultural land referred u/s.2(14)(iii) of the Act and also the assessee has a good case with evidence to support his grounds and arguments. The Id. Commissioner of Income Tax (Appeals) has not provided adequate opportunity of hearing and confirmed the order of the Assessing

Officer and pleaded for set aside off the order of the Commissioner of Income Tax (Appeals) and the allow the appeal.

**7.** On the other hand, the Id. Departmental Representative relied on the order of the lower authorities and objected to the submissions of the Authorised Representative.

**8.** We heard the rival submissions and perused the material on record and judicial decisions cited before us. The Id.AR emphasized on the facts that the assessee has sold agricultural land duly supported with Chitta Adangal, certificate of Village Administrative Officer (VAO) certifying harvest of paddy in the agricultural land and also agricultural operations carried for more than two years before the date of sale. The provisions of Sec. 50C of the Act does not apply to agricultural land and it is apparent that the sale of the property is a distress sale. The Id. Commissioner of Income Tax (Appeals) decided the case on the findings of the Assessing Officer and confirmed without providing opportunity of hearing. Considering the circumstances pleaded by the Id. Authorised Representative that not providing adequate opportunity to plead the case before the appellate authority, we set aside the order of the Commissioner of Income Tax (Appeals) and remit the issue in dispute to the file of Commissioner of Income Tax (Appeals)

to pass the order on merits after giving one more opportunity to the assessee to put forth his arguments and to decide afresh.

9. In the result, the appeal of the assessee is ITA No.1799/Mds/2015 is partly allowed.

Order pronounced on Thursday, the 11th day of February, 2016, at Chennai.

Sd/-  
(चंद्र पूजारी)  
**(CHANDRA POOJARI)**  
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-  
(जी. पवन कुमार)  
**(G. PAVAN KUMAR)**  
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 11.02.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |