

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2067/Mds/2015

निर्धारण वर्ष / Assessment Year : 2012-13

M/s A.V. Thomas Leather &  
Allied Products Private Limited,  
64, Rukmani Lakshmipathy Salai,  
Egmore, Chennai - 600 008.

v. The Deputy Commissioner of  
Income Tax,  
Corporate Circle 1(1),  
Chennai - 600 034.

PAN : AAACA 6246 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.2101/Mds/2015

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of  
Income Tax,  
Corporate Circle 1(1),  
Chennai - 600 034.

v. M/s A.V. Thomas Leather & Allied  
Products Ltd.,  
22, Marshalls Road, Egmore,  
Chennai - 600 008.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by : Sh. T. Banusekar, CA

राजस्व की ओर से /Revenue by : Dr. Milind Madhukar Bhusari, CIT

सुनवाई की तारीख/Date of Hearing : 30.12.2015

घोषणा की तारीख/Date of Pronouncement : 05.02.2016

**आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

Both the appeals of the assessee and Revenue are directed against the same order of the Commissioner of Income Tax (Appeals)-1, Chennai, dated 05.08.2015 and pertain to assessment year 2012-13. We heard both the appeals together and disposing of the same by this common order.

2. Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative, submitted that the assessee-company sold agricultural land measuring 15.14 acres at Keezhakottaiyur and Mambakkam Village for a total consideration of ₹56,24,95,297/- to M/s Smart Value Homes Limited, Mumbai. The assessee claimed the profit on sale of the land as exempt under Section 2(14) of the Income-tax Act, 1961 (in short 'the Act'). By considering the exorbitant price for which the land was sold, and the buyer being a person who deals in real estate, the Assessing Officer found that the gain arising out of the sale of the land cannot be treated as sale of agricultural land. In fact, the Assessing Officer placed his reliance on the judgment of Apex Court in Sarifabibi Mohamed Ibrahim v. CIT (70 Taxman 301). On appeal by the assessee, the

CIT(Appeals) found that the use of the land by the buyer cannot be a determining factor to decide the nature of land in the hands of the assessee. Placing reliance on the judgment of Madras High Court in Sri M.S. Srinivasa Naicker v. ITO (292 ITR 481), the Commissioner found that the land in question is agricultural land. According to the Ld. D.R., no agriculturist would purchase the land at the price at which the land was sold by the assessee-company and the buyer has purchased the land for promoting real estate, therefore, the CIT(Appeals) is not justified in treating the land as agricultural land.

3. On the contrary, Sh. T. Banusekar, the Ld. representative for the assessee, submitted that admittedly, 15.54 acres of land was sold by the assessee for a total consideration of ₹56,24,95,297/- to M/s Smart Value Homes Limited, Mumbai. Referring to the copy of Village account No.2, otherwise known as Adangal, which is available at pages 29 to 34 of the paper-book, the Ld. representative submitted that the land was classified as agricultural land and the same was subjected to cultivation. The assessee has also returned agricultural income in regular course. It is not the case of the Assessing Officer that the land is not subjected to

cultivation. The only objection of the Assessing Officer is that the assessee sold the land at an exorbitant rate and the purchaser is a real estate dealer. Placing reliance on the judgment of Madras High Court in Sri M.S. Srinivasa Naickar (supra), the Ld. representative submitted that on identical set of facts, the Madras High Court examined the issue. The case before the Madras High Court is that the assessee cultivated the land; the adangal register showed that the land was agricultural land wherein the assessee carried on agricultural operation till the date of sale of the land. The purchaser applied for conversion of the land into industrial plot. Therefore, the Assessing Officer found that the land in question was agricultural only. Since the intention of the purchaser is to convert the agricultural land into industrial plot, the land in question cannot be construed as agricultural land. In those factual circumstances, the Madras High Court found that the land is classified as agricultural land and the agricultural operations were carried by the assessee. By placing reliance on the earlier judgments in M. Venkatesan v. CIT (1983) 144 ITR 886, CIT v. P.J. Thomas (1995) 211 ITR 897 and in CWT v. E. Udayakumar (2006) 284 ITR 511, it was found that the purpose for which the buyer has purchased the land was totally different from what the transferor had intended to use the

lands in question. Since the assessee intended to cultivate the land and in fact, agricultural operations were carried on, the High Court found that the land in question was agricultural land even though it was sold for industrial use.

4. The Ld. representative for the assessee has also placed his reliance on the judgment of Madras High Court in Sakunthala Vedachalam v. Vanitha Manickavasagam (2014) 369 ITR 558 and submitted that when the land was classified as agricultural land in revenue records and which was evidenced by the adangal, the same has to be treated as agricultural land. The High Court further found that prior to the date of sale, it may not be necessary to carry out the agricultural operations.

5. The Ld. representative for the assessee has also placed reliance on the decision of Cochin Bench of this Tribunal in Harissons Malayalam Ltd. v. ACIT (2009) 32 SOT 497 and submitted that the amount of income to which the provisions of Section 10 of the Act applies, if any such amount is credited to the Profit & Loss account, shall be reduced from the book profit for the purpose of Section 115JB of the Act. Referring to Section 10(1) of the Act, the Ld. representative submitted that in computing the total

income of a previous year of any person, agricultural income shall not be included therein. Referring to the copy of circular issued by CBDT in No.550 dated 1<sup>st</sup> January. 1990, a copy of which is available at page 59 of the paper-book, the Ld. representative submitted that capital gains arising from the transfer of the agricultural land will not constitute "revenue" within the meaning of Section 2(1A)(a) of the Act. The Ld. representative further submitted that the profit on sale of agricultural land constitutes agricultural income as observed by the CBDT in the above circular. Therefore, the capital gains arising on sale of the land cannot form part of book profit for the purpose of Section 115JB of the Act. Referring to another decision of Cochin Bench of this Tribunal in I.T.A. No.377/Coch/2010 dated 29.02.2012, a copy of which is available at pages 56-58 of the paper-book, the Ld. representative submitted that the Cochin Bench by placing reliance on the judgment of Apex Court in Singhai Rakesh Kumar v. Union of India (2001) 247 ITR 150 and CIT v. All India Tea and Trading Co. Ltd. (1996) 219 ITR 544, submitted that income arising on transfer of agricultural land is not exigible to capital gains tax being in the nature of agricultural income. In fact, according to the Ld. representative, the computation of book profit under Section 115JB

of the Act was raised by the assessee in the assessee's appeal. Therefore, the Ld. representative submitted that the CIT(Appeals) is not justified in not reducing the profit on sale of the agricultural land while computing book profit under Section 115JB of the Act.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer found that the assessee has sold the land in question for an exorbitant price of ₹56,24,95,297/- to M/s Smart Value Homes Limited, Mumbai, a real estate dealer. Therefore, the Assessing Officer rejected the claim of the assessee for exemption as agricultural income. The fact that the land is classified as agricultural land is not in dispute. It is also not in dispute that the assessee has returned agricultural income year after year. The adangal extract, which is available at pages 29 to 34 of the paper-book, clearly shows that the land in question was subjected to agricultural operation. Therefore, it was obvious that the land is an agricultural land. Therefore, the profit arising out of such land has to be treated as agricultural income as found by the Apex Court in *Singhai Rakesh Kumar (supra)* and *All India Tea and Trading Co. Ltd. (supra)* which was followed by the decision of Cochin Bench of

this Tribunal in Nilgiri Tea Estates Ltd. (supra). The CBDT has also subsequently clarified that the profit on sale of the land has to be treated as agricultural income and will not constitute “revenue” within the meaning of Section 2(1A)(a) of the Act. In view of the above, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly found that the profit on sale of the land has to be classified as agricultural income.

7. Now coming to the assessee’s appeal, the only contention of the assessee is while computing book profit under Section 115JB of the Act, the agricultural income cannot form part of book profit. The Ld. representative for the assessee placed his reliance on the decision of Cochin Bench in Harrisons Malayalam Ltd. (supra) and contended that the amount of income to which the provisions of Section 10 of the Act applies, such amount, if credited to the Profit & Loss account, shall be reduced from the book profit for the purpose of Section 115JB of the Act. The Ld. representative further found that in computing the total income of previous year of any person, agricultural income shall not be included therein. In this case also, it is an admitted fact that the land in question is an agricultural land and the assessee was carrying on agricultural operation. Therefore,

as discussed earlier, the profit on sale of the land has to be treated as agricultural income. Therefore, if any such income is credited to the Profit & Loss account, the same has to be reduced from the book profit while computing income under Section 115JB of the Act. Therefore, this Tribunal is unable to uphold the order of the CIT(Appeals) on this issue. By following the order of Cochin Bench of this Tribunal in Harrisons Malayalam Ltd. (supra), the orders of the lower authorities are set aside. The Assessing Officer is directed to reduce the profit on sale of agricultural land from the book profit for the purpose of computing income under Section 115JB of the Act.

8. In view of the above discussion, the appeal of the Revenue is dismissed. However, the appeal of the assessee is allowed.

Order pronounced on 5<sup>th</sup> February, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 5<sup>th</sup> February, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती/Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-I, Chennai
4. Principal CIT, Chennai-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.