

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.689/Mds/2016
निर्धारण वर्ष / Assessment Year : 2012-13

Shri K. Bhavani Shankar,
37, Race Course Road,
Coimbatore – 641 018

v. The Deputy Commissioner of
Income Tax,
Corporate Circle 1,
Coimbatore.

PAN : ALTPB6312J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri K. Raghu, CA
: Shri R. Jeyakumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 25.01.2017

घोषणा की तारीख/Date of Pronouncement

: 23.02.2017

आदेश / O R D E R

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

This appeal of the assessee is directed against the order of the
Commissioner of Income Tax (Appeals)-1, Coimbatore dated
18.12.2015 and pertains to the assessment year 2012-13.

2. Shri K. Raghu, the Ld. representative for the assessee submitted that the first issue arises for consideration is addition of ₹8,73,22,381/- treating the agricultural land as capital asset. According to the Ld. representative, the assessee transferred 33.35 acres of agricultural land situated at Perur village, Coimbatore. The assessee has produced all the details including the copy of the sale deed before the Assessing Officer. For the year under consideration, the Assessing Officer after verifying the materials available on record found that the assessee has sold 22.63 acres of land situated at Perur village to Shri B. Somasundaram on 07.12.2011 for a total consideration of ₹9,05,20,000/- Though the sale deed was registered for ₹2,28,46,500/- the land was sold for ₹9,05,20,000/-. In fact, the agreement was entered into between the parties on 27.07.2011. The agreement discloses the sale value of the property as ₹40 lakhs only per acre. The assessee after taking into consideration of the sale consideration disclosed in the sale agreement claimed that the land in question is an agricultural land.

3. According to the Ld. representative, the Assessing Officer rejected the claim of the assessee holding the land in question is not an agricultural land, accordingly levied tax on the capital gain. Referring to the assessment order, the Ld. representative submitted

that the guideline value was only ₹2,28,46,500/-. However the same was sold for ₹9,05,20,000/-. The Assessing Officer after considering the sale consideration of the assessee found that no sensible agriculturist purchases the land in question to carry out any agricultural operation. Accordingly concluded that the land in question is not an agricultural land and it is a capital asset. Referring to the fair market value adopted by the Assessing Officer as on 01.04.1981, the Ld. representative submitted that even though a specific ground was raised before CIT (Appeals), the same was not adjudicated by him. The Ld. representative further submitted that the land in question is classified as agricultural land in revenue records. The chitta issued by the taluk office, copy of the order of settlement Commissioner was totally ignored by the authorities below. According to the Ld. representative, the assessee cultivated coconut trees with the help of pump sets. The assessee has also offered for taxation the agricultural income for the purpose of computing the correct tax. Hence, according to the Ld. representative, the addition made by the Assessing Officer may be deleted.

4. On the contrary Shri R. Jeyakumar, the Ld. Departmental Representative submitted that even though the assessee claimed the land in question is an agricultural land, there is no material available

on record to suggest that the land in question is classified as agricultural land. In the absence of any material, regarding the classification of the land as agricultural land by the State Revenue Department, it cannot be concluded that the land in question is an agricultural land. Therefore, the CIT (Appeals) has rightly confirmed the addition made by the Assessing Officer. With regard to fair market value as on 01.04.1981, the Ld. D.R., very fairly conceded the specific ground raised by the assessee was not disposed off by the CIT (Appeals). Therefore at the best the matter may be remitted back to the file of the CIT (Appeals) to dispose off the ground raised by the assessee with regard to fair market value as on 01.04.1981.

5. We have considered the rival submissions on either side and perused the material available on record. The assessee claims that the land in question is an agricultural land. From the assessment order, it appears that the assessee was examined. The assessee clarified before the Assessing Officer during the course of examination that he purchased the land in question for making the same into plots and sell in as Farm sites. The Assessing Officer however proceeded on the assumption that the assessee claimed that the land in question is an agricultural land. The assessee has now produced the copies of the Chitta issued by the Taluk office and also copy of the order of

settlement Commissioner in respect of this land. These materials were not considered by the Assessing Officer and the CIT (Appeals). This Tribunal is of the considered opinion that when the assessee claims that the land in question is agricultural land, the classification of the land by the State Revenue Department plays an important role. Therefore, it is for the Assessing Officer to examine the classification of the land by the State Revenue Department before reaching any conclusion. In other words, the Assessing Officer has to find out whether the land in question is a wet land or dry land. In case of wet land, definitely there will be a source for irrigation. In case of dry land, the assessee could also cultivate the same by creating artificial source of irrigation by digging well or bore well. Therefore, before concluding that the land in question is not an agricultural land, it is necessary to bring on record that the classification of the land by the State Revenue Department., the actual crop if any cultivated by the assessee. Moreover since the assessee claims to have purchased the land to make into plots and sale it as farm sites, it needs to be ascertained whether the assessee intended to engage in the business of real estate. Since, these aspects were not examined either by the Assessing Officer or by the CIT (Appeals), this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer. Accordingly, the orders of the lower authorities are

set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the matter afresh and decide the same in accordance with law after giving reasonable opportunity to the assessee. The assessee will be at liberty to file the necessary material before the Assessing Officer.

6. With the above observation, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 23rd February, 2017 at Chennai.

Sd/-

(डि.एस. सुन्दर सिंह)
(D.S. Sunder Singh)
लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 23rd February, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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