

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' 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. 451/Mds/2017
निर्धारण वर्ष / Assessment Year : 2007-08

Smt. D. Sivagama Sundari,
32, Boag Road, T. Nagar,
Chennai – 600 017.

v. The Income Tax Officer,
Non-Corporate Ward 2(1),
Chennai – 600 034.

PAN: AACPS4247H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri V. Jagadisan, CA
: Shri M.M. Bhusari, CIT

सुनवाई की तारीख/Date of Hearing : 19.04.2017
घोषणा की तारीख/Date of Pronouncement : 31.05.2017

आदेश /ORDER

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-2, Chennai dated 19.12.2016 and pertains to the assessment year 2007-08.

2. Shri V. Jagadisan, the Ld. representative for the assessee submitted that the assessee sold agricultural land during the year

under consideration and claimed the same as exempted from taxation. According to the Ld. representative originally the land in question was purchased by Smt. CE Saraswathy Ammal on 27.05.1982. According to the Ld. representative, Smt. CE Saraswathy Ammal is the mother of the assessee. After the death of Smt. CE Saraswathy Ammal, the assessee succeeded to the property and she was in physical possession and enjoyment of the same for the long period. The assessee has also cultivated the same. Referring to the Patta issued by the Tahsildar, the Ld. representative submitted that the land was classified as wet land. Referring to the Adangal extract, the copy of which is available at page 37 in the paper book, the Ld. representative submitted that the land was subject to cultivation of paddy. Due to failure of monsoon, the assessee could not cultivate paddy in some of the years. However, seasonal crops were cultivated. The land continues to be agricultural land. The characteristics of land was not changed at any point of time. Admittedly the land in question is situated beyond 8Km radius of the nearest municipality. Therefore the profit on sale of such land has to be treated as income from agriculture and cannot be subjected to taxation under the Income Tax Act, 1961 (in short 'the Act'). Referring to the assessment order, the Ld. representative submitted that the Ld. AO claims that in the adangal, it is referred as 'puncture' land. When the land is classified as wet

land by the State Revenue Department, the Ld. Assessing Officer is not justified in saying it is a puncture land. At any stretch of imagination, the land classified as wet land by the State Revenue Department cannot be construed to be an un-cultivable land. When the land was classified as wet land and the said land could not be cultivated for failure of monsoon, the Revenue authorities cannot take advantage of that situation and claim that the land in question is not an agriculture land at all. Unless and until the State Revenue Department reclassifies the land as residential or otherwise, the Income Tax authorities cannot ignore the classification made by the State Government. The land was purchased as agriculture land by the assessee's mother which continues to be agriculture land till the assessee sold the same. In fact, the land was sold as agriculture land. Therefore the Ld. AO is not justified in rejecting the claim of the assessee. The Ld. representative placed his reliance on the judgment of the Hon'ble Madras High Court in Principal Commissioner of Income Tax vs. Mansi Finance Chennai Ltd. (2016) 97 CCH 0005 and also judgment of Hon'ble Madras High Court in Mrs. Sakunthala Vedachalam vs. ACIT, (2014) 369 ITR 558. The Ld. representative has also placed reliance on the unreported judgment of this Bench of the Tribunal in ITO vs.G. Rajalakshmi, ITA No.2807/Mds/2014 dated 28.08.2015. The Ld. representative also placed reliance on various

judgments of the various High Courts including the judgment of the Hon'ble Apex court in CWT vs. Officer In charge, (1976) 105 ITR 133.

3. Shri M.M. Bhusari, the Ld. Departmental Representative submitted that no doubt, the land in question was classified as wet land by the State Government. The Tahsildar clarified that no crop was cultivated from 01.04.2004 to 31.03.2007. The Ld.AO also found that the land was referred as puncture land which means, the land is un-cultivable. The Ld.DR further submitted that the assessee has not return any income from agriculture at any point of time. In the absence of any agricultural operations, income and expenditure for cultivation, the Ld.AO found that the land in question is not an agriculture land. Therefore the profit on sale of such land is liable for taxation. The Ld.CIT(Appeals) after considering the facts of the case, found that the land cannot be construed as agriculture land at all. Therefore the profit on sale of such land is liable for taxation.

4. We have considered the rival submissions on either side and perused the material available on record. It is not in dispute that the assessee's mother Smt. CE Saraswathy Ammal purchased the land on 27.05.1982 and she cultivated the land till her life time. On the demise of Smt. CE Saraswathy Ammal, the assessee succeeded to

the property. The assessee admittedly sold the land during the year under consideration. The Patta issued by the Tahsildar which is otherwise known as Village-10(1) account clearly indicates that the land in question is a wet land. 10(1) village account is for the purpose of collection of taxes/land revenue based upon the classification of the land. The State Government taking in to consideration of the quality of the sand classified the subject land as wet land. During the fasli year 1408, the assessee cultivated paddy which is obvious from the adangal register, otherwise known as Village account No.2, the copy of which is available at page 37 of the paper book. There is no material available on record to suggest that the classification of the land was changed at any point of time. The classification of land as wet land continues to be the same till the assessee executed the sale deed for sale of the property. For some years the assessee could not cultivate the land in question for failure of the monsoon. It is a common knowledge that for cultivation of paddy sufficient water is necessary. When the land is classified as wet land by the State Government, there should be a natural source like tank or lake for irrigation of land in question. Due to failure of monsoon, there may not be any water supply from the earmarked tank or lake. It do not mean, the land is un-cultivable. When the land is classified as wet land, this Tribunal is unable to understand how the AO or CIT(Appeals)

observed that the subject land un-cultivable. This Tribunal is of the considered view that the classification of land was made by the State Government by taking in to consideration of the source of irrigation, quality of soil, etc. The subject land continues to be “wet land”, therefore, the Assessing Officer is not correct in observing as the land is un-cultivable. This Tribunal is of the considered opinion that wet land cannot be construed to be an un-cultivable land by any authorities in the State. The matter would stand at different footing, in case the classification was changed by the State Government. An identical situation was examined by this Tribunal in Smt. G. Rajalakshmi (supra) and this Tribunal found when the land was classified as wet land and it was subject matter of cultivation of paddy, the VAO cannot go beyond the official document maintained while performing his official duty. In fact this Tribunal has observed as follows at para 5 & 6 :-

“5. We have considered the rival submissions on either side and also perused the material available on record. The only dispute is with regard to whether the land is agricultural land or not. The copy of Patta, which is otherwise known as Village Account No.10 shows that the land in question is a wet land, therefore, the State Government classified the land as wet land. When the patta and other documents are available before the Assessing Officer, it is not known how the Assessing Officer came to the conclusion that the subject land is a dry land. This Tribunal is of the considered opinion that the materials available on record clearly suggest that the land was classified as agricultural land.”

6. The next issue arises for consideration is whether the land was cultivated or not. The State Revenue Department is taking the Cultivation Account in every six months. The Village Administrative Officer has to take the Cultivation Account and record in Village Account No.2. This Village Account No.2 is otherwise known as Adangal/Cultivation Account. Subsequently, a gazetted officer from the Taluk Office will re-verify the accounts taken by the Village Administrative Officer and this account would be used for estimating the food production of the District. Therefore, it is obvious that the Cultivation Account (Adangal) prepared by the Village Administrative Officer is the basic document which was maintained by the State Revenue Department in the regular course of official functioning. In this document, the subject land was shown as if it was cultivated with paddy. Once the Village Administrative Officer, in exercise of his official functioning, found that the land was subjected to cultivation with paddy, this Tribunal is of the considered opinion that the same cannot be doubted by the Income Tax Authorities. Even during examination, the Village Administrative Officer clarified that the subject land was under cultivation. In those circumstances, this Tribunal is of the considered opinion that the land in question is agricultural land and it was subjected to cultivation. The only contention of the Revenue now before this Tribunal is that the Adangal Register was not examined by the Assessing Officer. When the assessee filed the documents before the Assessing Officer including the Adangal Register, it is for the Assessing Officer to examine the same. Instead of examining the Adangal Register, the Assessing Officer proceeded as if the land was classified as dry land and the Village Administrative Officer admitted that the land was not cultivated after Tsunami. This Tribunal is of the considered opinion that the statement of the Village Administrative Officer cannot go beyond the official document maintained while performing the official duty. Since the Adangal Register which is one of the document maintained by the State Government shows that the said land was cultivated with paddy, this Tribunal is of the considered opinion that the said land is an agricultural land, therefore, it cannot be treated as a capital asset u/s 2(14) of the Income-tax Act. The CIT(A) has also found that the subject land

was situated beyond 8kms radius of the municipal limit and the population was less than 10,000. In those circumstance, this Tribunal do not find any infirmity in the order of the CIT(A). Moreover, it is not the case of the Revenue that the CIT(A) has admitted any fresh material during the course of appellate proceedings. In such circumstances, this Tribunal is unable to accept the contention of the Revenue that the matter needs to be remitted back to the file of the Assessing Officer for re-examination. In view of the above discussion, we do not find any infirmity in the order of the lower authority. Accordingly, the same is confirmed.”

We have carefully gone through the judgment of Madras High Court in Mansi Finance Corporation Chennai Ltd., (supra). On an identical situation, the Madras High Court after considering various judicial precedence on the subject found that on similar situation the land in question is an agricultural land. Similarly, in M/s. Sakunthala Vedachalam (supra) the High Court found that when the land was classified as agriculture land, merely because adjacent land was put to use for commercial purpose, that cannot be a reason to treat the land in question as not agricultural land. The High Court observed that the manner in which the adjacent land is used by the owner therein was not a ground to come to a conclusion that the assessee's land were not agriculture in nature. In view of the above judgment of the Madras High Court, this Tribunal is of the considered opinion that the land in question is very much agriculture land and continues to be a wet land.

5. Now coming to the contention of the Ld.DR that the assessee has not return any agricultural income, returning of agricultural income would depend upon the profit earned in agriculture. When the assessee cultivated the land by incurring expenditure and no profit was earned, it is not necessary for the assessee to disclose in the return of income. Only when the assessee earned profit in the cultivation, the same has to be disclosed in the return of income for the purpose of computation of total taxable income. It is a fact that agricultural income is not taxable under the provisions of Income Tax Act. Agricultural income is taxable by the respective State Government only. For the purpose of computation, it is necessary to disclose the agricultural income. When the assessee has no agricultural income, it is not necessary to disclose the same. Merely because the assessee has not disclosed the agricultural income in the return filed that cannot be a reason for treating the land in question as non-agricultural land. Merely because the adjacent lands were used for commercial purpose as observed by the Madras High Court that cannot be a reason for treating the land in question as non-agricultural land. Since the land in question continues to be classified as wet land in the State Revenue record, this Tribunal is of the considered opinion that both the authorities below are not justified in treating the land in question as non-agricultural land. Accordingly the orders of the lower

authorities are set aside and the addition made by the Ld.AO is deleted.

6. In the result, the appeal of the assessee stands allowed.

Order pronounced on 31st May, 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 31st May, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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