

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.1271/Mds/2017

निर्धारण वर्ष / Assessment Year : 2013-14

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

PAN : ALTPB 6312 J

(अपीलार्थी/Appellant)

v.

The Deputy Commissioner of  
Income Tax,  
Corporate Circle 1,  
Income Tax Office,  
Race Course Road,  
Coimbatore – 641 018.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri K. Raghu, CA

प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 24.07.2017

घोषणा की तारीख/Date of Pronouncement : 27.07.2017

### **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 31.03.2017 and pertains to assessment year 2013-14.

2. Shri K. Raghu, the Ld. representative for the assessee, submitted that the assessee sold an agricultural land. Even though the land was situated within 8 KMs radius of Coimbatore municipality, it is not a notified municipality, therefore, the agricultural land cannot be construed as capital asset for the purpose of computing capital gain. According to the Ld. representative, for assessment year 2012-13, an identical issue came before this Tribunal and this Tribunal remitted back the matter to the file of the Assessing Officer for reconsideration. Referring to the information said to be received from Taluka Office under Right to Information Act, the Ld. representative submitted that the subject land is situated within territorial jurisdiction of Perur Town Panchayat and it does not form part of Coimbatore municipality. The Ld. representative further submitted that the land is classified as agricultural land, therefore, there cannot be any levy of capital gain tax.

3. The Ld. representative for the assessee further submitted that the population of Perur Tow Panchayat is less than ten lakhs. Therefore, according to the Ld. representative, as per definition provided in Section 2(14) of the Income-tax Act, 1961 (in short 'the

Act'), the subject land cannot be construed to be capital asset. According to the Ld. representative, the subject land has to be necessarily treated as agricultural land and not liable for capital gain tax. Referring to the order of this Tribunal for assessment year 2012-13 in I.T.A. No.689/Mds/2016 dated 23.02.2017, the Ld. representative submitted that on identical situation, the matter was remitted back to the file of the Assessing Officer.

4. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative submitted that the subject land was situated within 2 KMs radius from Coimbatore municipality. Moreover, the Assessing Officer has not considered the population of locality. The assessee is raising this issue for the first time before this Tribunal, therefore, according to the Ld. D.R., an opportunity may be given to the Assessing Officer to consider the population of locality and thereafter decide the issue, as it was referred to the Assessing Officer for the assessment year 2012-13.

5. We have considered the rival submissions on either side and perused the relevant material available on record. A part of the land was sold by the assessee during assessment year 2012-13, which came before this Tribunal for consideration in I.T.A.

No.689/Mds/2016. This Tribunal by an order dated 23.02.2017 remanded back the matter to the Assessing Officer by observing as under:-

“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. Since the issue is identical as that of assessment year 2012-13, this Tribunal is of the considered opinion that the matter needs to be reconsidered as directed by the Tribunal for assessment year 2012-13. Moreover, the issue raised by the assessee regarding population and notification of municipality also need to be examined by the Assessing Officer. Accordingly, the orders of the authorities below are set aside and the entire issue raised by the assessee is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue afresh and decide the same in accordance with law, after giving a reasonable opportunity to the assessee. The assessee will be at liberty to file necessary material before the Assessing Officer.

7. The next issue arises for consideration is disallowance of legal expenditure of ₹12,07,193/-.

8. The assessee claims legal expenditure of ₹12,07,193/- on sale of agricultural land, due to some dispute with buyer for realization of time of sale consideration. The CIT(Appeals) confirmed the order of the Assessing Officer on the ground that these expenditures were incurred after transfer of the land, and allowed the balance sale consideration. Since the main issue of assessment of capital gain is remitted back to the file of the Assessing Officer, this Tribunal is of the considered opinion that this issue also needs to be reconsidered by the Assessing Officer. Accordingly, the orders of the lower authorities are set aside and the issue of disallowance of legal expenditure is also remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the matter in the light of the material that may be filed by the assessee and thereafter decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

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

Order pronounced on 27<sup>th</sup> July, 2017 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 27<sup>th</sup> July, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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