

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3469/Mds/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Shri K. Pondurai,
C/o Shri J. Prabhakar,
Chartered Accountant,
Residency Apartments,
245, T.T.K. Road, Alwarpet,
Chennai - 600 018.

v. The Deputy Commissioner of
Income Tax,
Circle 1, Tambaram Range,
Tambaram.

PAN : AAEPP 8065 A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri J. Prabhakar, CA

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

सुनवाई की तारीख/Date of Hearing : 23.11.2017

घोषणा की तारीख/Date of Pronouncement : 10.01.2018

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) -10, Chennai, dated 30.11.2016 and pertains to assessment year 2011-12.

2. The only issue arises for consideration is rejection of claim of exemption on sale of property.

3. Shri J. Prabhakar, the Ld. representative for the assessee, submitted that the assessee sold his agricultural land to the extent of 16.69 acres at Periyavellikadu Village of Cheyyar Taluk, Kancheepuram District to M/s BGR Boilers Pvt. Ltd. on 13.09.2010, for a total consideration of ₹5,00,70,000/-. According to the Ld. representative, the agricultural land was purchased by the assessee in the year 2006 along with a motor pump set with electricity service connection for agriculture. The assessee cultivated mango trees on the land. Placing reliance on the photographs available at pages 17-19 of the paper-book, the Ld. representative submitted that it is evident that the assessee had cultivated mango trees. Referring to pages 23-26 of the paper-book, the Ld. representative submitted that these are all copies of extract of the Village Account No.2, which is otherwise known as Adangal. According to the Ld. representative, this Village Account No.2 clearly shows that the assessee has cultivated mango trees. It also disclosed the availability of motor pump set to irrigate the mango trees. According to the Ld. representative, this extract of Adangal was filed before the Assessing Officer during the course of remand proceeding. However, it was not considered either by the Assessing Officer or

by the CIT(Appeals). According to the Ld. representative, while referring to the bill produced for repairing drip irrigation system, the Assessing Officer found in the remand report that the mango trees were planted only after the sale of land for the purpose of getting exemption. According to the Ld. representative, the bill available before the Assessing Officer is only for the purpose of purchasing certain material for repairing the existing drip irrigation system. The drip irrigation system was already in use, therefore, according to the Ld. representative, the observation made by the CIT(Appeals) and the Assessing Officer that the mango trees were planted only after the sale of the property for the purpose of claiming exemption is not correct.

4. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that during the remand proceeding, the Assessing Officer found that the materials required for drip irrigation were purchased in January, 2010, therefore, he concluded that the mango trees were planted only after the sale of the land for claiming exemption. On a query from the Bench whether the Adangal extract now filed by the assessee in the paper-book was available before the Assessing Officer during the remand

proceeding? The Ld. D.R. very fairly submitted that there was no reference about Adangal extract either in the remand proceeding or in the order of the CIT(Appeals). According to the Ld. D.R., the land in question is dry land. It is for the assessee to establish that the assessee had cultivated the land. When the material available on record indicates purchase of items for irrigation in January, 2010, according to the Ld. D.R., it cannot be said that the assessee had cultivated the mango trees earlier, therefore, the CIT(Appeals) has rightly found that the land in question is not an agricultural land.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The issue arises before this Tribunal is whether the land sold by the assessee is agricultural land or not? No doubt, the land is classified as dry land. It is not in dispute that even the dry land can be used for agricultural activities. The Income-tax Act refers agricultural land for the purpose of claiming exemption on sale.

6. In the State of Tamil Nadu, no land is classified as agricultural land. It is a fact that the lands are classified as wet land, dry land and land belonging to Government such as *Paramboke* land, *Natham*, etc. In this case, the land in question is classified as

“dry land”. If the dry land is used for cultivation activities, then such a land can be construed as agricultural land under the Income-tax Act. In the case before us, the Adangal extract filed by the assessee shows the existence of motor with well. The Adangal extract discloses the existence of mango trees on the land. Therefore, it is obvious that the assessee had cultivated the mango trees. Placing reliance on the copy of the bill available on record, the Department claims that the materials for drip irrigation system were purchased only in January, 2010, therefore, the assessee could not have cultivated the land earlier. However, the assessee claims that the bill available on record refers to the materials purchased for repairing the existing drip irrigation system and not for establishment of new drip irrigation system.

7. Be that as it may, for the purpose of deciding whether the land is used for cultivation activities or not, the Adangal extract plays an important role. The Adangal extract is maintained by the Village Administrative Officer at the village level under the direct supervision of Head Quarter Deputy Tehsildar of concerned taluk. The Village Administrative Officer is expected to go around the village and take the cultivation account including standing trees and

availability of irrigation facilities on the land. This record is further supervised by the Head Quarters Deputy Tehsildar. The information collected by the Village Administrative Officer at the village level will be used by the Statistical Committee for the purpose of estimating the food production at taluk level, district level, State and national level. Therefore, the Village Account No.2 or Adangal extract maintained by the Village Administrative Officer is the basic document to prove the cultivation made by any individual in the State of Tamil Nadu. Other than the Village Account No.2 or Adangal extract, no document would be available for establishing cultivation of crop after three or four years. Therefore, this Adangal extract cannot be ignored.

8. The Adangal extract, even though claims to be filed before the Assessing Officer during the course of remand proceeding and before the CIT(Appeals), it was not considered by either of the authorities. As rightly submitted by the Ld. D.R., there was no reference about the Adangal extract either in the remand report or in the first Appellate order. This Tribunal is of the considered opinion that the Adangal extract being the basic document, which proves the cultivation, needs to be examined by the Assessing Officer.

Since the Assessing Officer and the CIT(Appeals) have not considered the Adangal extract maintained by the Village Administrative Officer which is the basic document, this Tribunal is of the considered opinion that the matter needs to be reconsidered. Accordingly, the orders of both the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh in the light of the material available on record, including the Adangal extract / Village Account No.2, and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee. It is open to the Assessing Officer to conduct enquiry as he deem fit.

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

Order pronounced on 10th January, 2018 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the December, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-10, Chennai-34
4. Principal CIT- 7, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.