

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH : CHENNAI

**श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष ।**
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No.433/Mds/2017

निर्धारण वर्ष /Assessment year : 2012-2013.

K. Shanthi,
No.84, Vinayagar Koil Street,
Dr. Sivananda Colony,
Coimbatore 641 012.

Vs. The Assistant Commissioner of
Income Tax,
Non Corporate Circle 2,
Coimbatore.

[PAN AIJPS 3534N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri. T. Banusekar, C.A.
: Mrs. Vijayaprabha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 17-01-2018

घोषणा की तारीख /Date of Pronouncement

: 02-02-2018

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

In this appeal filed by the assessee, which is directed against an order dated 30.12.2016 of the Commissioner of Income-tax (Appeals)-2, Coimbatore, it has raised the following grounds :-

1. *For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of*

equity, natural justice and fair play.

2.For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3.For that the Commissioner of Income Tax (Appeals) failed to appreciate that land sold by the appellant is rural agricultural land and is outside the purview of definition of capital asset u/s.2(14)

4.For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had carried on agricultural activities in the said land.

5.For that the Commissioner of Income Tax (Appeals) erred in concluding that the land is not agricultural land since it is classified as dry land in revenue records and not as agricultural land.

6.For that the Commissioner of Income Tax (Appeals) erred in concluding that the land is not fit for cultivation.

7.For that, without prejudice to the above, the Commissioner of Income Tax (Appeals) failed to appreciate that the land sold by the appellant is an agricultural land and the appellant is eligible to claim exemption u/s.54B on the gain arising from sale of such agricultural land.

8.For that the Commissioner of Income Tax (Appeals) erred in upholding the denial of exemption u/s.54B

9.For that the Commissioner of Income Tax (Appeals) failed to appreciate that the assessee has satisfied all the conditions for claiming exemption u/s.54B.

10.For that the Commissioner of Income Tax (Appeals) failed to appreciate that the land purchased by the appellant is also agricultural land and is eligible for claiming exemption u/s.54B.

11.For that the Commissioner of Income Tax (Appeals) failed to consider the explanations and evidences submitted by the appellant.

12. For that the appellant Objects to the levy of interest u/s.234A, 234B and 234C”.

2. Facts apropos are that assessee having income from house property and capital gains had filed her return for the impugned assessment year declaring income of ₹41,24,970/-. During the course of assessment proceedings, it was noted by the Id. Assessing Officer that assessee had claimed exemption u/s.54B of the Income Tax Act, 1961 (in short "the Act") on sale consideration received from sale of a land at Seerapalayam Village. As per the assessee, in lieu of the agricultural land sold by her at Seerapalayam Village, she had purchased two other pieces of agricultural land, one at Kodangipalayam and other at Devarayapuram village. The sale effected by the assessee was 4.29 acres of land at Survey Nos. 517 & 518 of Seerapalayam Village on 07.04.2011 and the consideration for this sales was ₹6,96,46,005/-. Purchases effected by the assessee were of about 7 acres of land at Survey Nos. 248/2, 279/2, 279/3, 280/1, 280/2A & 280/4A at Kodangipalayam village on 14.10.2011 for ₹3,46,50,000- and 6.19 acres of land at Survey Nos.191/1 and 191/1B of Devarayapuram Village on 20.02.2012 for ₹2,40,00,000/-. Contention of the assessee was that what was sold by her was agricultural land and the consideration she received was used for purchasing agricultural land, entitling her for deduction u/s.54B of the Act.

3. Ld. Assessing Officer doubting the claim of the assessee, required the Inspector from his office to make a verification of these land. As per the Ld. Assessing Officer, Inspector submitted a report which read as under:-

Sl.No	Schedule of property	Village Administrative Officer's certificate	Inspection Report
1	S.F.No.517 & S.F.No.518 located at Seerapalayam village at Madukkari Taluk	The land is a waste land and no agricultural activities are carried out for the post 10 years	On field inspection it is found that, the statement given by the VAO is correct. It is a barren land located besides Pollachi-Coimbatore National Highway (NH-209) The land is a dry land and dense bushes, dry weeds are protruding from the land. The land have no characteristic in carrying out agricultural activities. Because no water passage facilities such as canal or ridges are found to facilitate agricultural activities. Nearby landmark: L & T Bye pass road, Karpagam University and Pollachi Coimbatore Highway
2	S.F.No.248/2, 279/2, 279/3, 280/1, 280/2A & 280/4A located at Kodangipalayam village of Kinathukadavu Taluk	The land is an agricultural land and some parts of land was carried out in agricultural activities as per records available with local administration	On field inspection, it is found that the statement given by the VO is bound by Chitta and Adangal entries available with the local administration. At the time of my visit, no symptoms have been found to carryout agricultural activities in any part of the land in the specified S.F.Nos. Nearby landmarks: Asia Alloys – a metal making company, kids Matriculation Hr.Se. School and Pollachi – Coimbatore Highway (NH-209)

3	S.F.No.191/1, 191/B located at Devarayapuram village of Kinathukadavu Taluk	The land is a waste land and no agricultural activities are carried out for the post 5 years	On field inspection it is found that, the statement given by the VAO is correct. It is a barren land and as per Chitta & Adangal records, the land is marked as vacant residential plot. Nearby landmarks: KM Plastics, a Plastic Water can making company and the adjacent plot is purchased to build a staff quarters by Lakshmi card clothing company
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Ld. Assessing Officer based on the report of the Inspector came to a conclusion that the land sold by the assessee at Seerapalayam Village was not agricultural but dry and barren in nature. According to him, the land was located by the side of Pollachi –Coimbatore National Highway and no agriculturist will purchase the land for such a huge consideration. Further, as per the Id. Assessing Officer, Village Administrative Officer, Seerapalayam Village had certified that there was no cultivation in the land since the year 2002-03.

4. Assessee was required to show cause why exemption claimed u/s.54B of the Act should not be denied since land sold was not agricultural in nature. Reply of the assessee was that she was doing agricultural activities in the said land since five years. As per the assessee, her father late Shri.Kasthurisami Naidu had in a family partition done on 26.10.2007 in 2007 through deed No. 4884, gave the

land to her. Contention of the assessee was that she had grown Solam and Horsegram in the land and such produces were sold regularly. Further, as per the assessee in the Revenue records, the land was recorded as dry manavari lands. Assessee also pointed out that fencing of the property was done by the purchaser and there was no fencing at the time of sale. Assessee also stated that during some seasons there were no cultivation due to scanty rains. In support of the agricultural activities carried on by her, assessee produced certain bills and vouchers relating to sowing of seeds and sale of crops.

5. Ld. Assessing Officer after going through the reply of the assessee and based on the verification which he did on the bills and vouchers submitted by her, came to a conclusion that the bills were not genuine nor reliable. According to him, bills for sale of solam were dated 13.06.2011 and 30.06.2011, whereas the land was sold by the assessee on 07.04.2011. Thus, he came to a conclusion that what was sold by the assessee at Seerapalayam Village was not an agricultural land. He also relied on the report of the Inspector, that the two pieces of land purchased by the assessee for claiming deduction u/s.54B of the Act, were both not agricultural in nature. According to him, exemption u/s.54B of the Act was available only for reinvestment of consideration received on sale of agricultural land, in another

agricultural land. He denied the exemption claimed by the assessee under the said section. An addition of ₹6,64,74,665/- was made.

6. Aggrieved, assessee moved in appeal before the Id.CIT(A). Argument of the assessee was that the land which was sold was agricultural land as per Revenue records and as per use. According to the assessee, it was classified as dry land due to lack of irrigation facility. Contention of the assessee was that Inspection report given by the Inspector of Income Tax was based on the inspection done after four years from the date of sale. As per the assessee, for claiming the deduction u/s.54B of the Act, what was required was previous use of the land for agricultural purpose. Submission of the assessee was that continuous use of the land was not possible due to lack of water resources but this could not be a ground for denying the exemption claimed u/s.54B of the Act. Reliance was placed on a decision of Co-ordinate Bench in the case of *M.A. Alagappan vs. ITO, 29 ITD 69* and Hyderabad Bench of the Tribunal in the case of *ACIT vs. N. Raghu Varma, 142 ITD 421*, and that of Hon'ble Jurisdictional High Court in the case of *Sakunthala Vedachalam , Mrs. Vanitha Manickavasagam vs. ACIT 369, ITR 558*.. Assessee also produced a certificate from the President of Seerapalayam Panchayat, in support of her contention that the land sold was put to agricultural use.

7. Concurrently, assessee also argued that the agricultural land which was sold was located beyond 8 kms from Coimbatore Corporation limits. As per the assessee, capital asset as defined in Sec.2(14) (iii) (b) of the Act excluded such land from levy of capital gains tax.

8. Ld. Commissioner of Income Tax (Appeals) after considering the submissions of the assessee held that assessee herself had considered the land sold by her as a capital asset, in the return of income, and claimed deduction u/s.54B of the Act. According to him, potentiality of the land was not a relevant factor for deciding the nature of the land. For taking this view, Id. Commissioner of Income Tax (Appeals) relied on a judgment of Hon'ble Apex Court in the case of *CWT vs. Officer-in-Charge (Court of Wards), Paigah, 105 ITR 133*. As per the Id. Commissioner of Income Tax (Appeals) the land which was barren, though it was capable for agricultural use could not be considered as agricultural land unless it was subject to agricultural operations. Based on the judgment of Hon'ble Gujarat High Court in the case of *CIT vs. Siddharth J. Desai 139 ITR 628*, Id. Commissioner of Income Tax (Appeals) factored the thirteen tests that were to be applied for ascertaining nature of the land to assessee's case. According to him, Revenue records in the nature of Chitta and Adangal

produced by the assessee, clearly showed that no crops were cultivated in the land for ten years. Further, according to him, Village Administrative Officer had clearly classified the land as waste land and no agricultural activities were carried out therein. As per the Id. Commissioner of Income Tax (Appeals), Panchayat President's letter, certifying that agricultural activities were carried on in the land, could not be accepted as valid proof, since Panchayat President was not the competent authority for certifying the nature of a land. Ld. Commissioner of Income Tax (Appeals) also noted that assessee never declared any agricultural income in her returns for earlier years and the sales bills for agricultural produce produced by the assessee could not be accepted. According to him, there was nothing to indicate that the land was intended for agricultural purpose or was put to use for agricultural purpose.

9. Apart from the above, as per the Id. Commissioner of Income Tax (Appeals) neighboring Municipalities Viz., Kurichi and Madukkarai were a part of Coimbatore Corporation limits and the land was within 8 kms of such limits. As for the decision of Co-ordinate Bench in the case of M.A. Alagappam(supra), Id. Commissioner of Income Tax (Appeals) noted that in the Wealth Tax Assessments done on the concerned assessee, nature of land was accepted, which was not the case here. As for the decision of Hyderabad Bench of the

Tribunal in the case of N. Raghu Varma (supra), Id. Commissioner of Income Tax (Appeals) noted that concerned assessee was growing subabul crop and evidence were produced for agricultural operation. Ld. Commissioner of Income Tax (Appeals) distinguished the judgment of Hon'ble Jurisdictional High Court in the case of *Sakunthala Vedachalam (supra)* stating that the land in question in the said case had grown casuarinas crops and this was certified by the Tahsildar. Thus, according to the Id. Commissioner of Income Tax (Appeals), decisions and judgment cited by the assessee were all distinguishable. He agreed with the view taken by the Id. Assessing Officer that the land sold by the assessee in Seerapalayam Village was not agricultural land eligible for deduction u/s.54B of the Act.

10. Now before us, the Id. Authorised Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that the land which was sold was not a piece of land which was purchased by the assessee. As per the Id. Authorised Representative, it was an ancestral property which came into the possession of the assessee through a partition deed executed by her father. As per the Id. Authorised Representative, assessee as well as her father were growing solam and horsegram in the said land. Contention of the Id. Authorised Representative was that the produce

was not substantial due to scanty irrigation facilities. However, according to him, this would not convert a piece of agricultural land to a non agricultural one. Ld. Authorised Representative submitted that assessee was not doing any business but had only done agricultural activities, all along. Relying on the English translation of the chitta and adagal placed at paper book pages 4 & 5, Id. Authorised Representative submitted that the land was classified as dry land by the Revenue. According to him, only standard classifications made by the Revenue authorities were to show a land either as wet land or as dry land. According to him, the land sold by its very nature was agricultural and certificate from Panchayat President of Seerapalayam Village placed at paper book pages 7, 9 and 11 clearly proved the cultivation which were carried out. Further, as per the Id. Authorised Representative, assessee had also placed before the lower authorities letter from M/s.Sri Venkateshwar Traders, certifying purchase of white corn cultivated by the assessee. Contention of the Id. Authorised Representative was that there was no mention by any of the Revenue authorities that it was a waste land. As per the Id. Authorised Representative this was a presumption taken by the lower authorities.

11. Continuing his submissions, Id. Authorised Representative submitted that inspection by the Inspector, deputed by the Id. Assessing Officer was done after four years. This, according to him

could not have reflected the conditions of the land, as it was, on the day of sale. As per the Id. Authorised Representative in the inspection report it was stated the land was a dry one with dense bushes and dry weeds protruding therefrom. According to him, it might be true that purchaser of the land did not continue with the agricultural activities due to difficulties in getting continuous irrigation. This would not, as per the Id. Authorised Representative, mean that assessee was not carrying on any agricultural activity in the impugned property. Id. Authorised Representative submitted that there was no plotting or any conversion of the land. Contention of the Id. Authorised Representative was that there was nothing on record to show any non agricultural operation being carried out either by the assessee or by the purchaser. Relying on the judgment of Hn'ble Apex Court in the case of *Raja J. Rameshwar, Rao vs. CIT 42 ITR 179*, Id. Authorised Representative submitted that without demonstrating sufficient proof to show non agricultural use, a dry land could not be classified as non agricultural land.

12. On the question of the nature of the two pieces land acquired by the assessee based on which the claim u/s.54B of the Act was preferred, Id. Authorised Representative submitted that first of these was located at Survey Nos.248/2, 279/2, 279/3, 280/1, 280/2A & 280/4A at Kodangipalayam Village, Referring to the English

translation of the purchase deed placed at paper book pages 33 to 42 of the paper book, Id. Authorised Representative submitted that one of the sellers of the same was Smt. Saroj Singhania wife of one Shri. Gopalakrishna Singhania. As per the Id. Authorised Representative, property sold by Smt. Saroj Singhania to the assessee was levied capital gains tax in the hands of the Smt. Saroj Singhania by the Revenue. Contention of the Id. Authorised Representative was that this matter had travelled upto the Tribunal and this Tribunal in *ACIT vs.Smt. Saroj Singhania (ITA No.396/Mds/2016, dated 30.11.2016)* had held the land sold by Smt. Saroj Singhania to be agricultural in nature. Therefore according to him, Revenue could not say that the land in Survey Nos.248/2, 279/2, 279/3, 280/1, 280/2A & 280/4A was not agricultural in nature.

13. Viz-a-viz the second piece of land at Devarayapuram Village acquired by the assessee on 20.02.2012 from one Shri. B. Pattabiramaraja, contention of the Id. Authorised Representative was that the land acquired by the assessee was at Survey Nos.191/1B-2 whereas the land on which the Inspector had given report was related to those located in survey No. 191/1 and 191/1B. According to the Id. Authorised Representative, Chitta and Andagal of this land property clearly indicated it to be agricultural. Thus, according to him, assessee was denied deduction u/s.54B of the Act to which she was entitled.

14. Per contra, Id. Departmental Representative strongly supporting the orders of the authorities below submitted that Chitta and Adangal of the property at Seerapalayam Village clearly indicated the land as an uncultivated one, since ten years. Bills of sale for produce furnished by the assessee, were subsequent to the date of transfer of the land to the buyer and this as per the Id. Departmental Representative proved these to be not genuine. Contention of the Id. Departmental Representative was that enquiry done by the Inspector of Income Tax found no trace of any agricultural activities. According to her, first condition that was to be satisfied for claiming a deduction u/s.54B of the Act was that land which was sold should have been used for agricultural purpose for atleast two years prior to the date of sale. As per the Id. Departmental Representative nothing was produced by the assessee to prove such use. On the other hand, according to her, the certificate from Village Administrative Officer clearly indicated that land was uncultivated since ten years. As per the Id. Departmental Representative, it was impossible to imagine somebody paying such a huge amount for a piece of agricultural land. She also stressed on its proximity to Coimbatore city. Thus, according to her, lower authorities was justified in treating the land as non agricultural.

15. Ad libitum reply of the Id. Authorised Representative was that intention of the purchaser was irrelevant in construing nature of the land. Reliance was placed on the judgment of Hon'ble Jurisdictional High Court in the case of *M.S. Srinivasa Naicker vs. ITO, 292 ITR 481*. Further, as per the Id. Authorised Representative, their lordships had also held that price for which the land was sold was not relevant on deciding on the nature of the land. Id. Authorised Representative submitted that in the event, assessee was held not eligible for claiming deduction u/s.54B of the Act, assessee should be given deduction u/s.54EC of the Act for ₹50,00,000/- spent by her on 30.09.2011 for purchasing Bonds of Rural Electrification Corporation Ltd. According to him, assessee had filed an additional ground in this regard. Reliance was placed on the copy of the bond placed at paper book page 83.

16. Replying to the above, Id. Departmental Representative submitted that claim u/s.54EC of the Act was not preferred by the assessee before the lower authorities. According to her, it was a fresh claim and could not be allowed at this stage. Reliance was placed on the judgment of Hon'ble Apex Court in the case of *Goetze (India) Ltd vs. CIT, 284 ITR 323*.

17. We have considered the rival contentions and perused the orders of the authorities below. There are four questions to be

answered. First is whether the land sold by the assessee at Seerapalayam Village was agricultural in nature or not. Second is whether the pieces of land purchased by the assessee at Kodangipalayam and Devarayapuram Villages were agricultural in nature. Third is whether the conditions set out in Section 54B of the Act were met. And fourth is, if assessee's claim u/s.54B of the Act is not allowed, whether it could be given deduction claimed by it, now, u/s.54EC of the Act. Each of these questions are answered in the subsequent paras.

18. English translation of the Revenue records in the nature of Chitta and Adangal for the land sold by the assessee at Seerapalayam Village on 07.04.2011 for ₹6,96,46,005/- at Survey Nos. 517 & 518 of the village, appear at paper book pages 4 and 5 and these are reproduced hereunder:-

*'Land ownership details: No.10(1) Division
Dist: Coimbatore
Revenue Village: Seerapalayam,
Circle : Madhukarai,
Patta No.670
Name of the owners*

1. *P.Shanthi wife of Sivakumar,*
2. *P. Kasturi Vasanthi wife of G. Parthasarthy.*
3. *Muthulakshmi Vishwanathan wife of P.G. Vishwanathan.*

Survey No & Sub Division	Wetland		Dry land		Others	
	Area	Duty	Area	Duty	Area	Duty
	Hectare / Acre	Rs/ Pai	Hectare / Acre	Rs/ Paise	Hectare / Acre	Rs/ Paise
517 -	-	--	1-65.00	3.31	--	--
518 2	--	--	0-32.00	0.92	--	--
			1-97.00	4.23		

English Translation of A Registrar

A Register Details

Dist: Coimbatore
Circle : Madhukarai,
Village: Seerapalayam

1. Survey No	517	9. Soil age & Tpye	8-3
2. Sub Division No.	--	10. Soil quality	5
3. Old Survey No & Sub Division	517	11. Duty (Rupees- Paise)	2.00
4. Part	--	12. Area (Hectare- Acre)	1-65.00
5. Government/ Ryotwari	Ryotwari	13. Total duty (Rupees - Paise)	3.31
6. Land Type	Dry land	14. Patta No.	1670
7. Mode of irrigation	--	15. Note	--
8. One yield or two yields	1	16. Name	S. Shanthi & 2 others.

The above record clearly show that the land was dry in nature. "A" Register does clearly indicate the type of the land as dry land. The vital aspect, we note is that against Sl.No.8 in "A" Register, which

gives the number of yields from the land, number one has been shown. In our opinion this clearly indicate that there was atleast one yield per year from the land. What strikes us is the fact that the land was ancestrally held and never subjected to any plotting by the assessee or the purchaser. All this clearly shows its agricultural nature. Assessee has also produced bills dated 13.06.2011 and 30.06.2011 for sale of white corn. First of these bills was issued by one M/s. Sri Venkateshwar Traders and the other was of one Shri. C.M. Vadivel. Lower authorities had doubted the genuineness of these bills for a reason that these were dated subsequent to the sale which happened on 07.04.2011. In our opinion, the reason cited for rejecting these bills was not rational. Just because assessee had sold the land would not mean the produces from them were also sold. Assessee might have waited for sometime for selling the white corn harvested by her before the sale of the land. The time interval was less than three months and not huge enough to disbelieve the bills. Apart from that, there is a letter from one M/s. MKK Transport which evidenced payment made by the assessee for ploughing of the land by tractor, for sowing the corn seeds. This letter is much prior to the date of the sale of the land. Thus, in our opinion, the narrations in the Revenue records and the bills produced by the assessee clearly indicate that land sold was agricultural in nature.

19. Now coming to the second question whether the two pieces of land purchased by the assessee at Kodangipalayam and Devarayapuram Villages were agricultural or not. The land at Kodangipalayam Village was certified by Inspector of Income Tax Department who had inspected it, as having no sign of any agricultural activities, though the Revenue records indicated it to be agricultural in nature. One of the sellers of the land at Kodangipalayam Village was Smt. Saroj Singhania, as evident from copy of the deed placed at paper book 33 to 42. In the assessment of Smt. Saroj Singhania, the gains arising from the sale was assessed to capital gains tax and this was assailed by said Smt. Saroj Singhania. When the matter reached this Tribunal, a Co-ordinate Bench in ITA No. 396/Mds/2016, dated 30.11.2016 held as under at paras 5.1 & 5.2:-

“5.1 Whether the land used for agricultural purpose or not is not the material for determining the question whether the land was agricultural land or not. In the case of CIT Vs Officer-in-charge (105 ITR 133) Hon'ble Supreme Court held that agricultural land must be a land which could be said to be either actually used or ordinarily used or meant to be used for agricultural purposes, and determination of the character of land, according to the purpose for which it is meant or set apart and can be used, is a matter of which have to be determined on the facts of each particular case. In the present case there was no doubt whatsoever, on the nature of the land being agricultural land, except it is fact that the assessee has not claimed any agricultural income since the assessee has donated the entire agricultural produce to the Charitable Trust [Goshaala]. Under the provisions of section 133(6) of the Act, the Assessing Officer

has requested the Village Administrative Officer to furnish the Chitta Adangal Report. The certificate furnished by the VAO indicates that the lands under reference, substantial portion of the land was left fallow where no agricultural operations were carried out by the assessee, which does not mean that the land is not an agricultural land or the assessee has carried out any non-agricultural activities in that land. Further, there was no evidence to show that the assessee has applied for change of the land for non-agricultural purposes. In this case, it may be reasonable to hold that the Assessing Officer relied on various case laws rather than considering the facts of the case under reference and examining the applicability of those case laws, to the facts of the case. The lands held and sold by the assessee were certified and proved to be agricultural lands as per revenue records. Just because the assessee has not shown any agricultural income in the returns ever since the land was purchased, or even no agricultural operations were carried out by the assessee, the nature of the land shall not change until unless, the land in question was subsequently developed for commercial exploitation. Further, the nature of the land has not undergone any change, with the land revenue tax paid by the assessee and the records still showing them to be agricultural lands. The Assessing Officer has not brought any evidence on record to show that the land was developed for commercial exploitation, in spite of its proximity to the high way and surrounded by industries/school/colleges, etc. Thus, based on the facts of the case, it is reasonable to hold that the lands under reference are continued/remained to be agricultural lands, when the land was not put to non-agricultural use without any conversion of such lands into further developments such as commercialisation / plotting of lands, do not amount to adventure in nature of trade. The sale of land, irrespective of their value, as long as the said assets / lands did not lose the basic character of agricultural lands, does not constitute business activity of the assessee.

5.2 *In the case of Raja J. Rameshwar, Rao v. CIT [1961] 42 ITR 179*, the Hon'ble Supreme Court has observed as under (headnote): *In the headnote of the decision, the following is what was actually stated, but while relying on the decision, the Assessing Officer has simply ignored the second sentence of the headnote:*

“Even a single venture may be regarded as in the nature of trade or business. When a person acquires land with a view to selling it

later after developing it, he is Carrying on an activity resulting in profit, and the activity can only be described as a business venture. Where the person goes further and divides the land into plots, develops the area "to make it more attractive and sells the land not as a single unit and as he bought it, but in parcels, he is dealing with land as his stock-in-trade; he is carrying on business and making a profit."

In the present case, the assessee has not carried out any non-agricultural operation such as developing the land by plotting and providing roads and other facilities and moreover, the assessee sold the land on acreage basis and not yardage basis. Therefore, the case law relied on by the Department has no application to the facts of the present case".

No doubt one of the issues considered by the Tribunal in the above case was whether the income could be considered under the head profits and gains of business. However, the essential question answered by the Tribunal was whether the land sold was agricultural or not. This Tribunal had held the land sold to the assessee as agricultural in nature. Coming to the land at Devarayapuram Village, classification of this land in the Chitta and Adangal placed at paper book pages 77 & 78 does not anywhere indicate it to be wasteland as claimed by the assessee. This land was also classified only as dry land. Considering the circumstances, the claim of the assessee that both these pieces of land were agricultural in nature, was in our opinion, acceptable.

20. Now coming to the third question whether the conditions set out in Section 54B of the Act were satisfied. Section 54B of the Act is reproduced hereunder:-

1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee being an individual or his parent, or a Hindu undivided family for agricultural purposes (hereinafter referred to as the original asset), and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year ; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil ; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45 ; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced by the amount of the capital gain.

(2) The amount of the capital gain which is not utilised by the assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in

accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—

(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires ; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Main contention of the Id. Departmental Representative is that exemption u/s.54B of the Act could be given only where the land sold was shown to have been used for agricultural purposes for two years preceding the date of transfer. The question now boils down to what could reasonably be expected from an assessee to prove use of land for agricultural purpose. Assessee here was an individual having no other business. Land which was sold was inherited by her from her father in the year 2007, through a family partition. Unless strong reasons are shown, it is difficult to presume that ancestrally held dry land was not being used for agricultural purpose. Especially so, when there was enough evidence to show agricultural operations. Two

years use for agricultural purpose mentioned in Sec. 54B(1) of the Act, in our opinion cannot be given such an interpretation to mean that an assessee has to prove day to day operation and use of the land. The surrounding circumstances as how the land came to the ownership of the assessee and how it was used by the assessee at a given point of time will be in our opinion determinative factors which clearly indicate that the land sold was used by her for agricultural purpose for more than two years. Hon'ble Jurisdictional High Court in the case of *M.S. Srinivasa Naicker (supra)* had held at para 20 of its judgment as under:-

'20. In the decision reported in CWT v. E. Udayakumar [2006] 284 ITR 511, this court held that the fact that the land is located in a commercial area or the land having been partially used for non-agricultural purposes or that the vendee also had purchased it for non-commercial purposes were totally irrelevant consideration for the purpose of application of section 54B. In the course of the decision reported in CWT v. E. Udayakumar [2006] 284 ITR 511, the Division Bench of this court referred to the decision in CIT v. Smt. Savita Rani [2004] 270 ITR 40 (P&H), wherein under similar circumstances it was held that the vendee's use is not of relevant consideration for the purpose of application of section 54B''.

Their lordships in the above judgment referred to an earlier judgment in the case of *CIT vs. E. Udayakumar, 284 ITR 511*. In this judgment, their lordships had approved the law laid down by the Hon'ble Punjab and Haryana High Court in the case of *CIT vs. Smt. Savita Rani, 270 ITR 40* and observed as under at para 8:-

'8. It is well settled in the case of CIT v. Smt. Savita Rani [2004] 270 ITR 40 (P&H), wherein it is held that the land being located in a commercial area or the land having been partially utilised for non-agricultural purposes or that the vendees had also purchased it for non-agricultural purposes, were totally irrelevant considerations for the purposes of application of section 54B''.

We also find that their lordships in both these judgments had considered the law laid down by the Apex Court in the case of Smt. *Sarifabibi Mohmed Ibrahim vs. CIT, 204 ITR 631* as to the tests that were to be applied for determining the nature of the land.

21. Coming to the aspect of nature of land acquired, what Section 54B of the Act requires is purchase of any other land for being used for agricultural purposes. It is not essential that land as on date of purchase was used for agricultural purposes. What is required is the intention of the assessee to use the new acquired land for agricultural purposes. As mentioned by us at para 19 above the land at Kodangipalayam Village and Devarayapuram Village acquired by the assessee were agricultural. Atleast there is nothing on record to show any intention for non agricultural use. We are therefore of the opinion that assessee was eligible for claiming exemption u/s.54B of the Act in respect of sale of the land at Seerapalayam Village and purchase of land at Kodangipalayam and Devarayapuram Village. Orders of the lower authorities are set aside. Ld. Assessing Officer is

directed to give the assessee, exemption claimed by her u/s. 54B of the Act.

22. Since we have answered first three questions in favour of the assessee, the fourth question regarding eligibility for claiming deduction u/s.54EC of the Act has become infructuous. Nevertheless, we will be failing in our duty, if we do not point out that assessee cannot be denied the benefit of tax such deduction if it had deposited the amount in Rural Electrification Corporation Limited, just for a reason that claim was not originally preferred by it in the return.

23. In the result, we allow the appeal filed by the assessee.

Order pronounced on Friday, the second day of February, 2018, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:02 February, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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