

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्रीएन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एसजयरामन, लेखा सदस्य के समक्ष

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

आयकर अपील सं./ITA No.2765/Chny/2018

&

S.P. No.322/Chny/2018

(in I.T.A. No.2765/Chny/2018)

निर्धारण वर्ष /Assessment Year : 2015-16

Shri Siddhart Dube,
No.48, Pragati Building,
Figure of 8 Road, East of Kailash,
Coonoor, The Nilgiris – 643 204.

v. The Income Tax Officer,
International Taxation,
Coimbatore.

PAN : AILPD 4763 E

(Appellant & Petitioner)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Ashok A. Kulkarni, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri R. Clement Ramesh Kumar, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 12.11.2018

घोषणा की तारीख/Date of Pronouncement : 16.11.2018

आदेश /O R D E R

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

The appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -16, Chennai, dated 09.08.2018 and pertains to assessment year 2015-16.

2. Shri Ashok A. Kulkarni, the Ld.counsel for the assessee, submitted that the assessee transferred agricultural land during the year under consideration. According to the Ld. counsel, in the agricultural land, wherein tea was cultivated by the assessee, a farm house was also constructed in the land. According to the Ld. counsel, the assessee has invested the capital gain on sale of agricultural land and claimed exemption under Section 54 of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. counsel, even if the sale proceeds were not invested for the purpose of exemption under Section 54 of the Act, still the profit on sale of agricultural land is exempted, therefore, it cannot be taxed. Placing reliance on the Adangal extract, the Ld.counsel submitted that the assessee, in fact, cultivated tea plant, therefore, the sale of land in which tea was cultivated, cannot be construed to be transfer of capital asset. In other words, according to the Ld. counsel, the sale proceeds of sale of agricultural land wherein tea was cultivated, is exempted from taxation. On a query from the Bench, whether the copy of Adangal extract now filed before this Tribunal was filed before the Assessing Officer and the CIT(Appeals), the Ld.counsel

very fairly admitted that the same was not filed before the CIT(Appeals).

3. We heard Shri R. Clement Ramesh Kumar, the Ld. Departmental Representative also. The Assessing Officer as well as the CIT(Appeals) rejected the claim of exemption under Section 54 of the Act. Now, the assessee claims that what was transferred by the assessee is agricultural land wherein tea was cultivated. This fact was not examined by the Assessing Officer as well as the CIT(Appeals). It is an admitted fact that the Adangal extract, a copy of which is available before this Tribunal now, was not available before the lower authorities. Therefore, the lower authorities had no occasion to examine whether the sale proceeds of sale of land, wherein tea was cultivated, was exempted from taxation or not.

4. This Tribunal being a final fact finding authority, the facts have to be settled so that the appellate forum may appreciate the grievance of the parties in a better manner. Since the Adangal extract was filed first time before this Tribunal, this Tribunal is of the considered opinion that the Assessing Officer has to re-examine the matter. Accordingly, in the interest of justice, the orders of both the

authorities below are set aside and the matter is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter in the light of the Adangal extract and other documents that would be filed by the assessee and find out whether the land is agricultural land and the sale proceeds were exempted from taxation and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes. Consequently, the Stay Petition stands dismissed.

Order pronounced in the court on 16th November, 2018 at Chennai.

sd/-

(एसजयरामन)
(S. Jayaraman)
लेखा सदस्य/Accountant Member

sd/-

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

चेन्नई/Chennai,

दिनांक/Dated, the 16th November, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-16, Chennai
4. Principal CIT, Tamil Nadu, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.